

BCI EXHIBIT

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1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.
10 -----x

11
12 DEPOSITION OF JONATHAN HUGHES

13 New York, New York

14 January 15, 2010
15

16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27056
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Page 2	Page 3
<p>1 2 3 4 5 January 15, 2010 6 10:15 a.m. 7 8 Deposition of JONATHAN HUGHES, held at 9 the offices of Hughes, Hubbard & Reed, LLP, One 10 Battery Park Plaza, New York, New York, before 11 Mary F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: ROBERT W. GAFFEY, ESQ. 9 BRIDGET CRAWFORD, ESQ. 10 11 12 BOIES, SCHILLER & FLEXNER, LLP 13 Attorneys for Barclays and The Witness 14 575 Lexington Avenue 15 New York, New York 10022 16 BY: JACK STERN, ESQ. 17 18 19 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 20 Attorneys for the Creditors Committee 21 51 Madison Avenue - 22nd Floor 22 New York, New York 10010 23 BY: ERIC KAY, ESQ. 24 25</p>
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<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: WILLIAM R. MAGUIRE, ESQ. 9 FARA TABATABAI, ESQ. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

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MR. STERN: Before we begin, let me just state for the record a point that we have discussed off the record. Mr. Hughes is obviously a senior legal advisor to Barclays. By designating Mr. Hughes as a 30(b)(6) representative to address certain topics, we do not intend to have Mr. Hughes testify to privileged communications.

He will testify to facts that he learned from various sources, including in some instances from counsel. And that testimony concerning facts, even if facts learned from counsel, does not constitute a waiver of the attorney/client privilege. And if we can have an agreement on that premise, we can proceed.

MR. MAGUIRE: I have no problem with that.

MR. GAFFEY: That's fine with us.

MR. KAY: Us as well.

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hearing on behalf of Barclays?

A. I think it included a number of Barclays employees and advisors. Those that I recall would include Michael Klein, who I think you know is an external advisor to Barclays; I think Archie Cox; Jason White, who is a member of the legal department at Barclays Capital.

I think Alan Kaplan was there, too, another member of the legal department at Barclays Capital, and several representatives from Cleary Gottlieb, who were the principal legal advisors to Barclays Capital at the time, so including Lindsee Granfield and probably Vic Lewkow, L-E-W-K-O-W.

There may have been more. I can't bring them to mind. I don't think there were any other Barclays employees there.

Q. Any other advisors or representatives?

A. I'm struggling to remember any more. There may have been.

Q. In preparation for this deposition, did you take any steps to refresh or to gather any information as to who was present at the sale hearing?

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JONATHAN HUGHES,
called as a witness by the Parties,
having been duly sworn, testified as follows:

EXAMINATION BY

MR. MAGUIRE:

Q. Mr. Hughes, good morning. As you know, I am Bill Maguire. I am going to be asking you some questions today. If any question is unclear, that may happen, let me know and we will try to clear it up.

If you answer, we can assume that you understand the question?

A. Absolutely.

Q. If you need to take a break at any time, just let us know and we will find a convenient stopping point.

A. Thank you.

Q. I would like to start by asking you about the sale hearing, and that's the hearing that was held next door in the bankruptcy court on September 19, 2008. Did you attend that hearing?

A. I did not.

Q. Can you tell me who attended that

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A. I did, yes.

Q. What did you do?

A. I spoke to a number of people, including those that I have mentioned, including other employees of Barclays, to try to establish whether, in fact, they were there.

Q. And is there anyone else that you learned was present?

A. I can't now recall any additional names.

MR. STERN: Can we go off the record for just a second.

MR. MAGUIRE: Certainly.

(Discussion held off the record)

MR. MAGUIRE: So counsel is just going to give us a list.

MR. STERN: Yes. Mr. Hughes' recollection is correct, and in addition, in preparing for this deposition, we learned that for Barclays, Gerard LaRocca was present at the very beginning of the hearing, but he left early in anticipation of the possibility of needing to prepare for a closing.

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2 The individuals from Cleary were
3 Victor Lewkow, Lindsee Granfield, Lisa
4 Schweitzer, Joel Moss, Seth Kleinman.
5 In addition, there were attorneys from
6 Sullivan & Cromwell present, Rob Lacy, Jay
7 Clayton, Hydee Feldstein, Elizabeth Summers,
8 Ken Myers.
9 And I believe that's the complete
10 list.
11 Q. Sir, what was Mr. Klein's role in
12 attending the sale hearing?
13 A. I'm not sure he had a specific role
14 with respect to the hearing, but he had been,
15 throughout the course of that week and in the
16 period following the hearing, both an advisor to
17 Barclays and also one of the principal
18 negotiators of the transaction from the
19 Barclays' perspective.
20 Q. And what about Mr. Cox's role?
21 A. Mr. Cox was also one of the principal
22 negotiators of the transaction. So again, would
23 have had an actual interest to be there.
24 Q. And what about Mr. White?
25 A. Mr. White was one of my colleagues in

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2 population, I don't know.
3 I believe it did include a
4 presentation, so to speak, of Weil Gotshal's
5 meaningful thoughts about certain aspects of the
6 transaction, and that that presentation -- or
7 the presentation included representatives of
8 Lehman, Weil Gotshal, the creditors committee,
9 the trustee, and possibly others who were also
10 in attendance.
11 Q. And who gave that presentation?
12 A. I believe it was Lori Fife who was a
13 partner or is a partner at Weil Gotshal, I
14 believe.
15 Q. Anyone in addition to Ms. Fife?
16 A. I don't think that I have ascertained
17 with any certainty that anybody else made any
18 representations. It's possible that there were
19 other partners of Weil Gotshal that also
20 participated in it. But the recollections are
21 not all abundantly clear.
22 Q. But the efforts that you have gone to
23 as Barclays' designated 30(b)(6) representative
24 are that Barclays is not aware of anyone else
25 who spoke other than Ms. Fife in this

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2 the legal function who was one of the legal
3 advisors to Barclays on the transaction.
4 Q. And is the same true of Mr. Kaplan?
5 A. Correct.
6 Q. Can you tell me what you have learned
7 in terms of what explanations were made at the
8 sale hearing off the record about the
9 transaction?
10 A. Are you asking me if I recall or if I
11 have learned that there were some off-the-record
12 descriptions of the transaction at the sale
13 hearing?
14 Q. Yeah. If I understood your earlier
15 answers correctly, you weren't personally
16 present.
17 A. Correct.
18 Q. The question is, what information does
19 Barclays have as to what was said off the record
20 at the sale hearing?
21 A. Right. My understanding is that there
22 was at one point in the proceedings an
23 off-the-record description, as you say, provided
24 to the assembled mass. Whether it was aimed at
25 the entirety of the assembled mass of

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2 off-the-record presentation?
3 A. There are some recollections that
4 Michael Klein may have also discussed certain
5 aspects of the transaction with similar
6 groupings. Whether it was part of that same
7 presentation or whether it was different, I
8 haven't been able to establish.
9 Q. Anyone other than Ms. Fife and
10 Mr. Klein?
11 A. Not that I'm aware of.
12 Q. Did you speak with Mr. Klein about any
13 off-the-record discussion?
14 A. I have spoken to Mr. Klein about that,
15 yes.
16 Q. And what did he tell you?
17 A. I think it's fair to say his
18 recollection was not precise, which is why a
19 moment ago I mentioned that not all
20 recollections were clear.
21 Q. Can you tell me what is the best
22 recollection that you were able to get as to
23 what Mr. Klein had said?
24 A. It is hard, it is hard to be clear
25 about it, because I would be repeating what were

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answers from Mr. Klein that weren't sufficiently certain for me to be able to represent exactly what it is that he had said.

Q. If you could tell me what you were told. I understand there may be some uncertainties, but just tell me what it is that you were told about what he said, whether he told you or anybody else remembers him saying it.

A. The best that I could say is that while Mr. Klein didn't have a strong recollection of the events, that the -- there was a recollection that he had referred to certain changes to some aspects of the negotiations that had happened earlier in the week, and that Mr. Klein had described some of those to people at court at that time, during that after -- late afternoon, early evening.

Q. Who had that recollection?

MR. STERN: Hold on for a second.

I don't want you to intrude on the conversations that Mr. Hughes had in preparing for this deposition. You can ask him about the facts that he learned, but I

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uncertain, and as you can observe, my own recollections are uncertain.

Q. I just wanted to get the extent of what information you were able to get in that regard.

A. I understand.

Q. Did anyone recall what changes Mr. Klein referred to?

A. Again, with the same proviso as to certainty, there were references to, principally references to agreements made earlier that Friday between Lehman Brothers and Barclays with respect to what was subsequently termed clearance box assets, as a very convenient summary label, and another convenient summary label, some 15c3 assets, each of which had been the topic of discussions throughout the course of the day.

Q. And when you say with the same proviso as to certainty of recollection, what do you mean?

A. I mean that because they were -- each of those items were thought to be part of what Mr. Klein may have described to people at court,

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don't think you're entitled to know who told him precisely what.

So I'll allow you to testify to facts that you learned, as best you can recall them, but not to the conversations that you had in preparation for the deposition.

MR. MAGUIRE: Well, I think it is a fact as to who has a recollection, so I think if the witness -- that's a factual thing. That's not a legal advice or opinion. So I think I am entitled to know who had the recollection.

MR. STERN: So what is the question?

Q. So the question is, when you testified about the recollection that somebody had, who was the person who had that recollection?

MR. STERN: I'll allow you to answer that, if you remember.

A. My best recollection is that Lindsee Granfield and Jason White recalled some form of discussion. That's about as much as I can remember from the various discussions that I have had on the topic.

And as I say, those recollections were

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and that those -- that very description was not certainly recollected that they are -- by definition, the content of the description was not certainly recollected.

Q. Is what you gathered that certain people thought those two subjects are what Mr. Klein may have spoken about, or do they actually recall that he had spoken about each of those subjects?

A. The latter.

Q. And what did people recall him saying about clearance boxes?

A. That there had been a discussion and an agreement about the clearance box assets, and most importantly, I think, that Lehman Brothers had represented to Barclays that there were assets in what were termed the clearance boxes, which assets were unencumbered assets of Lehman Brothers, which were earlier in the day identified as being capable of being delivered in the transaction to Barclays.

Q. And who recalled Mr. Klein saying all that?

A. The people that I have mentioned, so I

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think Lindsee Granfield and Jason White.

Q. And did Lindsee Granfield and Jason White make clear to you that was a recollection, a clear recollection that they had?

A. Again, as I said earlier, I wouldn't describe their recollections as certain recollections, but that was my impression.

Q. I'm sorry. Your impression was --

A. That they recalled, first of all, a description of some facets of the transaction by Mr. Klein, but -- and that that included reference to the clearance box assets.

Q. Did they tell you who was present when Mr. Klein made his, I'll call it presentation?

A. No. Save that they thought it took place at court.

Q. Did anyone tell you that Mr. Klein referred to any other changes in the transaction?

A. As I mentioned a moment ago, I think it included the 15c3 assets. I don't recall that it included anything else. So that's possible that it did, but I don't recall anything else.

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record and then subsequently on the record, made references to what were hers or Weil Gotshal's impressions relating to certain changes to the descriptions that had been made earlier at the September 17 hearing.

Q. With respect to the descriptions at the earlier 17th hearing, that's with respect to the -- that included the description of the assets that Barclays was acquiring and the liabilities that it was assuming; is that correct?

A. There was a description on the 17th, I believe, with respect to the transaction as a whole, and that that description included reference to certain assets and certain liabilities, yes.

Q. And you understand that at the sale hearing on the 19th, Ms. Fife referred back to that?

A. Yes. In part, yes.

Q. Let's just focus on the part where she is referring back to the September 17 hearing. You understand that the -- Ms. Fife had earlier described the transaction as an acquisition, as

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Q. Did anyone tell you that they recalled Mr. Klein saying anything about margin?

A. No.

Q. Did anyone tell you that they recalled Mr. Klein saying anything about clearing fund?

A. No.

Q. Is there anything else that anyone told you they recalled Mr. Klein saying at the sale hearing?

A. Not that I recall.

Q. Is there anything else that was -- leaving aside Lori Fife's presentation for right now, is there anything else that you understand was said off the record in court other than what you have told us about Mr. Klein?

A. No.

Q. Can you tell us, please, what you understand Lori Fife said off the record?

A. The best I've been able to establish is that Ms. Fife referred to some of her earlier descriptions with respect to the transaction, by which I mean descriptions made at the hearing which preceded the sale hearing, namely on the 17th of September, and that she, both off the

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including an acquisition by Barclays of 70 billion dollars of long positions and the assumption of liabilities that had a book value that was described to the court on the 17th?

A. I understand the description to have been first and foremost a description of the asset purchase agreement between Lehman Brothers and Barclays, which at its heart was an agreement pursuant to which Barclays was to acquire the whole of the North American business of Lehman Brothers, and any of the assets used in connection with that business.

That rather broadly based transaction was qualified in a couple of respects, one of which was to recognize that certain assets were to be excluded and equally certain liabilities were to be excluded.

Ms. Fife, I believe, did refer to and gave valuation numbers with respect to certain assets and certain liabilities.

Q. I'm going to just focus on that part of your answer where the court was advised on the 17th about the book value of certain assets and certain liabilities. OK?

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A. Um-hm.

Q. Do you understand that Ms. Fife in her off-the-record presentation on the 19th referred back to the earlier disclosures to the court about the book values of the assets and the liabilities that were the subject of the acquisition?

A. I believe she did that both off the record and on the record, yes.

Q. And did her off-the-record discussion include a description that the values had changed from a book value that had been described to the court on the 17th to a book value on the 19th of 47.4 billion dollars?

A. I do believe that she made reference to the 70 billion dollars of long positions, and that she also made a reference to a reduction in that number. It's not certain in my mind or I believe in Barclays' mind how she arrived at that different number, but I do believe she did present a different number, both in the off-the-record and in the on-the-record description.

Q. In the off-the-record description, she

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also referred to a change in the book value of the liabilities that Barclays was assuming?

A. Again, I think it is more accurate to state it that she referred to liabilities and gave a number with respect to those liabilities of I believe 45.5 billion, and that that was a different number from the number mentioned on the 17th.

Again, what Ms. Fife -- the basis upon which Ms. Fife made those parts of her presentation, I couldn't -- I couldn't establish.

Q. I am only asking you what she -- whether she used that number and whether she was, in using that number, describing that it was a change in what had earlier been described as the book value of the liabilities that Barclays was assuming.

A. I don't think it is apparent to Barclays either from the recollection of the people that were there or from my own review of the transcript that necessarily there was a direct correlation between or a direct match between the liabilities and the number described

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and given on the 19th on the one hand and the liabilities and the number given and described on the 17th.

Q. But in the off-the-record discussion, Ms. Fife did give values both for the book value of the assets and the liabilities, and they were consistent with what she later said then in open court on the record?

A. I believe so, yes.

Q. Is there anything else that you can tell us about what Ms. Fife said in the off-the-record discussion?

A. I think there were certainly one or two additional points that I believe she made. First of all, I think she, and possibly others, by which I mean other representatives of Lehman Brothers in the form of Weil Gotshal partners, did remind the court both on and off the record that there was substantial uncertainty around the values and numbers that were being referred to, principally for two reasons.

One, the difficulty throughout the course of the week that Lehman Brothers had had in establishing accuracy around such numbers and

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values, and as importantly, the presentation, as I think we all now know, took place at a time of remarkable uncertainty and difficulty with respect to the markets as a whole.

The numbers that Ms. Fife referred to with respect to the long positions, I believe she also mentioned to the court that among the major reasons for the reduction in values with respect to those positions was the tremendous market events in the intervening period, by which I mean substantial amounts of those assets were no longer available to Lehman, and I think, in addition, the values of those assets had depleted materially.

Q. In your last answer, was that based on the part of the proceeding at the sale hearing that was on the record and before the judge, or was it exclusively based on the off-the-record discussion?

A. It's a reference to both discussions, but actually at least as much a reference to what she said on the record as off the record.

Q. Is there anything you recall her saying off the record that she did not repeat on

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2 the record?

3 MR. STERN: I'll just object to the
4 form because it is not his specific
5 recollection. He is testifying to
6 information he has learned. He wasn't
7 present.

8 MR. MAGUIRE: Absolutely. Frankly --

9 MR. STERN: With that objection, you
10 can answer.

11 Q. So the record is clear, and we are all
12 on the same page, I'm asking you about something
13 where you weren't even present, so all of my
14 questions and I'm assuming all of your answers
15 today are going to be not just from your
16 personal knowledge but also informed by whatever
17 information Barclays has. Is that your
18 understanding?

19 A. Yes.

20 I don't recall any other aspect of the
21 presentation off the record that was not relayed
22 to the court on the record. And I'm not -- I
23 don't recall having been told by others of
24 anything that was described off the record that
25 was not also described on the record.

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2 Q. You had quite a crew present at the
3 sale hearing. Are you aware of any
4 explanation -- let me take it first, any written
5 summary or explanation of what happened in court
6 that was transmitted to those who were not
7 present?

8 A. By a Barclays representative?

9 Q. Yeah.

10 A. No, I'm not aware of any such
11 description.

12 Q. Let me ask you about the
13 representations that were made to the court at
14 the sale hearing. Did you understand that the
15 representations that were made to the court
16 accurately described the deal?

17 A. I believe the descriptions were
18 accurate. I believe that most importantly,
19 representatives of Weil Gotshal described what
20 was the essence of the transaction, namely, the
21 acquisition by Barclays of the North American
22 business of Lehman Brothers.

23 I believe also that to the extent that
24 there was reference to any aspects of that
25 transaction, that it was essentially a fair and

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2 Q. And when you say you don't recall any
3 other aspect of the presentation, are you saying
4 in addition to what you understand Mr. Klein may
5 have said?

6 A. I'm referring to the presentations
7 that Lori Fife made.

8 Q. Yeah. What I wanted to find out,
9 frankly, is what Ms. Fife said off the record
10 that was not said to the court on the record.
11 Is there anything that you can point to that you
12 understand, that Barclays understands Ms. Fife
13 disclosed to everybody in court off the record
14 and then failed to disclose to the court on the
15 record?

16 A. I believe that Ms. Fife did not say
17 anything off the record that she did not also
18 say on the record.

19 Q. Thank you.

20 Are you aware of any description of
21 what happened in court that was prepared by
22 Barclays or relayed to other people within the
23 Barclays organization by any of those who
24 attended the hearing?

25 A. Sorry, could you repeat that.

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2 accurate description of what had been agreed.

3 Q. You understand that in the course of
4 the hearing, the court was advised that no cash
5 was being conveyed to Barclays?

6 A. That's not my understanding of what
7 was said at court. My understanding of what was
8 said at court with respect to cash -- and I
9 should just say as an aside that I assume we are
10 still talking about the hearing on the 19th?

11 Q. Absolutely.

12 A. There had at the hearing on the 17th
13 been reference to what I believe was described
14 as retained cash, and because in the intervening
15 period between the 17th and the 19th there had
16 been a change in this respect with respect to
17 the agreement, that the court was told that
18 there had been that change with respect to cash,
19 and that that retained cash was no longer in the
20 deal.

21 So I believe that the amounts
22 previously discussed were firstly 1.3 billion of
23 cash, which subsequently was reduced to
24 700 million, but that that cash was no longer in
25 the deal.

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2 Q. So is it your understanding that,
3 other than the retained cash, cash was being
4 conveyed to Barclays?
5 MR. STERN: Objection to the form.
6 You can answer if you understand it.
7 A. I -- I'm not aware of any other
8 discussions specifically with reference -- that
9 referenced cash prior to discussions with
10 respect to the 15c3 asset that I otherwise --
11 that I mentioned earlier.
12 Q. Again, limiting everything just to the
13 sale hearing, is it Barclays' understanding that
14 what was said to the court concerning cash at
15 the sale hearing was accurate?
16 A. I believe it was accurate, because it
17 was a reference to discussions and changes with
18 respect to an earlier agreement relating to what
19 I have said was referred to as retained cash. I
20 do believe that the court heard a fair and
21 accurate description of how that part of the
22 negotiation between Lehman and Barclays had
23 changed.
24 Q. You know that in the course of the
25 hearing, Ms. Fife described how Barclays was

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2 in addition that were also part of the agreement
3 and indeed part of the business of Lehman
4 Brothers, which, as I have said, was really the
5 heart of the transaction.
6 So I believe there were, and I believe
7 the court was otherwise informed, both on the
8 17th and on the 19th, that Barclays was
9 acquiring all of the assets of the Lehman
10 Brothers businesses, and that included any
11 assets used in connection with those businesses.
12 The 47.4, as I said, I believe, was a
13 reference to the earlier described long
14 positions that you asked me about a few moments
15 ago. But I believe it was both in detail and in
16 broad terms a fair and accurate description to
17 the court of what the transaction was all about.
18 Q. What are the significant assets in
19 addition to what Ms. Fife described as the 47.4
20 billion? What are the significant assets in
21 addition that you referred to in your last
22 answer?
23 A. I'm not sure I can recount every one.
24 I think there were, in the asset purchase
25 agreement, roughly 18 or maybe 19 categories of

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2 acquiring 47.4 billion dollars of assets. Is
3 Barclays' understanding that that was an
4 accurate representation?
5 MR. STERN: Objection to the form.
6 A. As you have put the question, I
7 understand you to be asking me whether a -- let
8 me start again.
9 Your question, if I may say, raises
10 two points. One, was Ms. Fife's use of the
11 47.4 number accurate, and two, was it -- if it
12 was, was it an accurate description of the
13 assets that were to be acquired in the
14 transaction.
15 My belief -- and I think -- and
16 Barclays' belief is that the reference to 47.4
17 was a reference by Ms. Fife to assets which had
18 previously been described as long positions in
19 the 17th hearing. It is also possible that it
20 included other assets.
21 Nobody at Barclays had any discussions
22 with Ms. Fife about the composition of that 47.4
23 number. But it is clear and always was clear to
24 Barclays, and I believe also to Lehman Brothers
25 and Ms. Fife, that there were significant assets

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2 assets. Included among them were buildings,
3 people, the as yet to be defined or valued other
4 assets in the business, and there was an
5 enormous amount of uncertainty about those
6 values.
7 It included all of the exchange-traded
8 derivatives business, all of the capital markets
9 business, and other aspects of the Lehman
10 business in the Americas, which I think were set
11 out in the asset purchase agreement.
12 I'm not sure that's an exhaustive
13 answer, but it certainly included each of those
14 items that I have mentioned.
15 Q. What about the 15c3 asset?
16 A. It certainly included the 15c3 assets.
17 It included the clearance box assets. Not least
18 because they were also all assets in -- held by
19 Lehman Brothers in -- and used in connection
20 with Lehman Brothers' bid in North America.
21 Q. When we talk about the significant
22 assets in addition to what Ms. Fife described as
23 the 47.4 billion, you say there are 18 or 19
24 categories, starting with buildings, personnel,
25 exchange-traded derivatives business and

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including the 15c3 asset and the clearance box?

A. Yeah, I don't view any of them as additional assets. I view them as identified assets in the business. I think there is a difference, or at least I view it as a difference.

Q. When you say identified assets, what do you mean?

A. I mean that the agreement in the APA was to -- was for Barclays to acquire all of the assets used in connection with Lehman Brothers' business. So it was from certainly the 15th -- no later than the 15th of September onwards, an agreement to acquire the business of Lehman Brothers.

It was deliberately not ever described, approached or otherwise discussed as a balance sheet deal, referring to the acquisition of specific assets. There was, during the course of the week of the 15th to the 22nd, a lot of discussion about particular assets within the business and how those might be best identified.

So when I use the term "identified"

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rather than "additional," it's because I think it is important to understand that the deal was about the business as a whole, with some limitations, as I mentioned a while ago, with respect to excluded assets. And that's why the asset purchase agreement described purchased assets in the way that it did.

So there was, from time to time, during the course of that week, specific reference to particular assets that had been identified in the discussion and in the negotiations. So for example, the clearance box assets and the 15c3 assets were not identified by Lehman Brothers as assets in the business available to be transferred until, you know, probably sometime on Friday, which was the 19th.

So to refer to each of these different assets as additional assets, I think is something of an inaccuracy. I think Barclays viewed them as identified, and there were certainly discussions about the particularities of the transaction in that way.

Q. It was Barclays' understanding that the clearance box and 15c3 assets were always

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part of the deal because they were part of the business; is that right?

A. I think by definition, they were part of the business of Lehman Brothers and were -- while they had not been discussed or specifically identified before Friday, I think they were by definition purchased assets.

Q. So -- I understand. So they were all covered by the original APA?

A. Correct.

Q. All the assets we have been discussing, I understand it is Barclays' understanding that they were all part of the business and part of the original APA; is that right?

A. I think that's right, yes.

Q. Now, let me just ask you to break it up into two parts. One is, which of those various assets did you understand were part of the 47.4 billion and which did you understand were not part of the 47.4?

A. I think I said earlier that I do not know how Ms. Fife arrived at that 47.4 number. So I'm not in a position to tell you what that

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number comprised.

Q. And is Barclays in a position to provide any understanding as to what it believed comprised the 47.4 billion dollars that was represented to the court at the sale hearing?

MR. STERN: Objection to the form.

Are you talking about speculation or --

MR. MAGUIRE: No. I'm asking him did Barclays have an understanding at the sale hearing.

MR. STERN: I thought he has already answered that, but go ahead.

A. My understanding was that Ms. Fife was describing or explaining to the court changes in the valuations of long positions which she previously described. Whether that was a description by Ms. Fife that was limited to that, I don't know.

Q. And your preparation for this deposition has not shed any additional light on that from the people you have spoken to at Barclays?

A. From the people I have spoken to at Barclays, their recollections are consistent

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2 with what I have just said. I have not had the
3 opportunity to speak to Ms. Fife or Mr. Miller,
4 so I can't say with certainty what was in her
5 mind when she presented the number.

6 Q. I'm only asking for Barclays'
7 understanding.

8 MR. STERN: Should we take a short
9 break for five minutes? Do you want to
10 finish a line of questions?

11 MR. MAGUIRE: That's fine, we can take
12 a break now. Now is fine.

13 (Recess)

14 BY MR. MAGUIRE:

15 Q. Sir, is Barclays aware of any
16 disclosure to the court of any profit or gain
17 that Barclays anticipated it would make from the
18 sale transaction?

19 MR. STERN: Are you talking about
20 September 19?

21 MR. MAGUIRE: Yes.

22 A. On September the 19th, I'm not aware
23 of anybody identifying to the court a gain, nor
24 am I aware that anybody who made any
25 representations to the court was in a position

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2 estate and the creditors.

3 Q. At the time of the sale hearing, did
4 Barclays expect to make a gain on the closing of
5 the transaction?

6 A. Sorry, could you just repeat, at which
7 point in time?

8 Q. At the sale hearing.

9 A. At the sale hearing, yes, I believe
10 so. I believe in fact we had even made the
11 public announcement that we would make a -- that
12 we expected to make a meaningful accounting gain
13 on the transaction.

14 Q. And when you say the public
15 announcement, you are referring to the
16 announcement and analyst call on the 17th?

17 A. Yes.

18 Q. In the course of that analyst call,
19 Mr. Varley described the deal as having been
20 derisked. Do you recall that?

21 A. I don't recall that specific term, no.

22 Q. Did Barclays understand the sale to
23 have been derisked?

24 A. I'm not sure I understand what you
25 mean by derisked.

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2 to know one way or another whether Barclays
3 would have had a gain.

4 I do think there were objections at
5 that hearing based on the notion that Barclays
6 would make a windfall profit from the
7 transaction. There were some meaningful
8 complaints, for want of a better word, made on
9 behalf of creditors, I believe, that identified
10 to the court a strong likelihood that Barclays
11 would make what in their description was a
12 windfall profit, and I believe that the judge
13 heard those complaints and dismissed them as
14 being insignificant in light of the importance
15 of the transaction and the importance of
16 approving the transaction, among other things,
17 for the benefit of the estate, creditors,
18 customers.

19 And I believe also that the court felt
20 that it was not relevant whether or not that
21 windfall profit did or did not exist. Even if
22 it did, I think that the judge explained that
23 there was a greater need in light of the turmoil
24 in the markets at that point in time. But as I
25 mentioned, in particular for the benefit of the

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2 Q. Did you participate in the analyst
3 call?

4 A. No, no, I did not.

5 Q. I'll represent to you that on the
6 call, Mr. Varley said, and I quote, "What we
7 have taken is a portfolio of trading assets and
8 liabilities that are first of all derisked, and
9 secondly, those that need to support the ongoing
10 parts of the business that we have acquired."

11 Is it Barclays' understanding that
12 that was a true and correct statement?

13 MR. STERN: I am going to object. I
14 think you can ask your questions however you
15 want, Bill, but I think in fairness to the
16 witness, if you are going to quote from
17 something, he should be allowed to review
18 it.

19 But subject to that, if you can
20 answer.

21 A. I've no reason to believe that what
22 Mr. Varley may have said was inaccurate. I
23 haven't spoken to Mr. Varley about that or
24 indeed any portion of his involvement in order
25 to prepare for this deposition.

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From the extract -- I assume it is an extract, what you have just read to me, it would appear that that was one or a series of comments with respect to parts of a greater whole, namely a larger transaction.

Q. Did you understand that the transaction had been derisked?

MR. STERN: Objection to the form.

A. The trans- -- if by the transaction you mean the acquisition of the businesses, the North American businesses of Lehman Brothers, and that -- using the term "derisked," you mean there was no risk in the transaction, no, I did not understand it to mean that.

Q. In what sense did Barclays not derisk the transaction?

A. The assets and liabilities in the transaction and substantial portions of the business of Lehman Brothers were incredibly uncertain, both in terms of definition and value. So there was, I think, enormous risk in the transaction throughout its negotiation and indeed following the closing of the transaction.

There was enormous risk to Barclays in

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my view. There were enormous risks that the people, for example, who we hoped would come along with that business may or may not have come along, either on day one or stayed on day two.

There was incredible uncertainty around the valuation of all of the assets, which is one of the reasons why there were no specific numbers represented or warranted in the transaction to be the actual numbers. I believe that's part of the reason also why there was no explanation to the court at any time that there was any certainty with respect to any of those numbers.

And indeed, there was clearly during the course of that week almost unending possibility to establish that there was risk in any valuation of any asset or any liability.

So I think that there was always, during the course of that week of negotiations and in the period following, significant risk to Barclays.

Q. With respect to the liabilities, what was the greatest risk that Barclays understood?

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MR. STERN: Objection to the form.

A. I don't think we ever have assessed the liabilities in the sense of valuing one specifically as compared to another. There are certainly -- there has certainly been work done by -- principally by our finance department to establish assets, assets and liability valuations, both during the course of the week and thereafter.

So I don't think we have got to the point of identifying the top ten liabilities and what they may actually look like. There were clearly substantial liabilities of varying types.

Q. Did Barclays ever identify any particular -- any specific single exposure that it felt was the greatest from among the various liabilities that it was assuming in this transaction?

MR. STERN: You're talking about before the closing or --

Q. Yeah, anytime before the closing, did Barclays say, this particular liability could blow us up?

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MR. STERN: Objection, objection to the form.

But you can answer.

A. I think Barclays was extremely concerned about the -- about a number of liabilities, included among which were the assets in the repo transaction, the unknown or unidentified size of liabilities with respect to the exchange-traded derivatives business. There were concerns about the liabilities that we took on with respect to employees, with respect to the buildings.

So I think it is fair to say that all of the liabilities that were identified were items of concern because, first and foremost, there had been -- there was no ability to establish whether representations made by Lehman Brothers with respect to each and every one of those liabilities was accurate or not, and as I think I mentioned, it was a period in which valuations, prices were changing, essentially all the time. And there was -- the degree of volatility during that period was so extreme, that I think it would have been surprising to

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2 anybody if anybody at that point had been sure
3 about the liabilities that were being taken on.
4 So I think Barclays was at all times
5 very concerned about the size or impact of each
6 of the key categories of liabilities in the
7 transaction.
8 Q. I would like to focus on just one of
9 those, and that's the, what you describe as the
10 unknown and unidentified size of the liabilities
11 in the exchange-traded derivatives business. So
12 my next questions will just focus on that.
13 A. Yup.
14 Q. What did Barclays understand was its
15 total exposure in taking on the exchange-traded
16 derivatives business?
17 A. I think at the time, we agreed with
18 Lehman Brothers that we would acquire all of the
19 exchange-traded derivatives business. First of
20 all, it was right at the beginning of the
21 discussion, by which I mean very early in the
22 week of September 15th, and I think at that
23 point in time, and indeed for an appreciable
24 period following the closing, not only was
25 Lehman Brothers unable to represent to us what

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2 A. At what point in time?
3 Q. Prior to the closing.
4 A. I don't think that prior to the
5 closing Barclays had any ability to conclude any
6 work on that point.
7 Q. And did the negotiators for Barclays
8 have authority to enter into the deal and close
9 the transaction without getting a handle on what
10 the total maximum exposure was on the
11 exchange-traded derivatives business?
12 A. Can you define what you mean by get a
13 handle on?
14 Q. Limit the -- get an understanding as
15 to what the maximum exposure to the company was
16 by taking on this business. Whatever that
17 number was, at least say it can be no worse than
18 this?
19 A. I think your question was, were
20 representatives of Barclays authorized to
21 conclude the transaction, without getting a
22 handle on.
23 I don't think that the authority
24 either expressly or impliedly delegated to the
25 Barclays representatives at any point would have

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2 the extent of the assets and liabilities were,
3 Barclays was also not in the position to
4 establish for itself what the extent of those
5 assets and liabilities were.
6 Q. What was the worst, what was Barclays'
7 worst case in terms of what it was facing as its
8 total exposure on the exchange-traded
9 derivatives business?
10 A. Again, at that point in time we were
11 not in a position to establish the extent of
12 such an exposure. It was partly for that reason
13 that it was made clear that we had to take all
14 of the assets together with all of the
15 liabilities, which included any property or
16 any -- of any sort or description that was being
17 held to secure or to support or was being used
18 in the business of managing that exchange-traded
19 derivatives exposure.
20 Q. Did anyone at Barclays get a handle on
21 whether the total maximum exposure in taking on
22 that business was a particular figure? 1
23 billion, 10 billion, 100 billion?
24 MR. STERN: Objection, asked and
25 answered.

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2 or did refer to that particular assessment. I
3 believe that the Barclays representatives at the
4 time were authorized to agree to acquire the
5 whole of the exchange-traded derivatives
6 business of Lehman Brothers, and that it was
7 reasonable in so doing for those representatives
8 to determine as best they could that if we were
9 to acquire all of the assets of the
10 exchange-traded derivatives business, that we
11 would also include in that any property which
12 was in part designed to limit exposures with
13 respect to those businesses.
14 So for example, if there were open
15 exchange-traded derivatives positions on any
16 futures or options exchange, there would
17 necessarily have been assets held in connection
18 with those open positions to secure and to
19 support the exposure either in those particular
20 positions or with respect to other aspects of
21 that business.
22 So I believe that because all of the
23 assets of any description and of any type were
24 to -- were part of what was identified to be
25 transferred in the transaction, that it was a

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<p>1 J. HUGHES 2 reasonable assessment on the part of the 3 Barclays representatives to take -- to reach 4 that agreement with Lehman Brothers or that part 5 of the agreement with Lehman Brothers. 6 There was, in any event, I guess, 7 residual risk in that assessment. 8 Q. Did anyone tell the Barclays board 9 that it's people had been unable to quantify the 10 maximum exposure to Barclays in taking on the 11 exchange-traded derivatives business? 12 MR. STERN: One second. I'm just not 13 sure what topic this relates to. I'm also 14 concerned that this may call for privileged 15 communications. 16 MR. MAGUIRE: I am only looking for 17 the facts of the disclosure, and we are 18 clearly talking about the gain. I 19 understand that in disclosing the gain, any 20 contingency would be an issue there. So it 21 is simply a factual question. I'm not 22 looking for any legal advice. 23 MR. STERN: I am trying to figure out 24 what topic this. 25 MR. MAGUIRE: Actually, it's on a</p>	<p>1 J. HUGHES 2 number of topics, but right now I think it 3 is -- 4 MR. STERN: I am going to allow it. I 5 am not going to be overly strict about that, 6 but -- OK. 7 Q. Again, I'm not interested in any legal 8 advice. I am just asking whether there was a 9 disclosure to the Barclays board as to the fact 10 that it was unable to quantify the maximum 11 exposure involved in taking on the derivatives 12 business? 13 A. I am not aware of specific comments 14 made to the board with respect to an inability 15 to assess the exposures you referred to. I am 16 aware that there were, on a number of different 17 topics, and I believe with respect to the 18 transaction as a whole, comments, as I say, and 19 descriptions to the board, among others, of how 20 uncertain all of the valuations were in this 21 transaction and there could at no point be any 22 absolute certainty about estimated values. 23 None of the -- most if -- most of the 24 valuations with respect to particular assets, to 25 the extent that we had them, were received from</p>
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<p>1 J. HUGHES 2 Lehman Brothers in the bizarre market 3 circumstances that I have already described, and 4 so it was very clear to the board of Barclays 5 and indeed I believe to the board of Lehman 6 Brothers and anybody involved in the transaction 7 at all that there was no certainty with respect 8 to estimations of valuations, and therefore, 9 with respect to the estimations of what the 10 exposure to Barclays may be. 11 I believe that the representatives of 12 Barclays who were involved in the discussions 13 with respect to particular assets, be they 14 exchange-traded derivatives or otherwise, made 15 their best effort at the time to estimate what 16 those exposures might be, and made those 17 estimations recognizing that it was certainly 18 fundamental to Barclays to insure that there was 19 sufficient comfort that we would gain more value 20 than ultimately we would liabilities, primarily 21 because it was important to the bank to insure 22 that in capital terms, this was not a negative 23 transaction for the bank and its shareholders. 24 Q. My last question was specific to the 25 liabilities involved in the exchange-traded</p>	<p>1 J. HUGHES 2 derivatives. I am going to ask you a slightly 3 broader question now that is specific to all of 4 the liabilities. 5 Are you aware of whether the board was 6 told that Barclays was unable to quantify the 7 maximum exposure to the company from the 8 liabilities it was assuming in this transaction? 9 A. I'm not aware of a communication in 10 those terms. I believe that the board was given 11 some estimated values with respect to 12 liabilities of one form or another, and again, I 13 believe the board was told that there was no 14 certainty with respect to those valuations. 15 Q. Did the board -- is it your position 16 that the board understood that Barclays could 17 not quantify the maximum exposure of the 18 liabilities it was assuming in this deal? 19 MR. STERN: Objection to the form. 20 A. Could you repeat the question. 21 Q. Yeah. The question is, while somebody 22 may not have said specifically that -- 23 specifically told the board that the company 24 couldn't quantify the maximum exposure of the 25 liabilities it was assuming, is it your</p>

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2 understanding that the board understood that
3 without having to be told that specific fact?
4 MR. STERN: Objection to the form.
5 A. I'm not sure I could say what the
6 board understood. I believe that the board was
7 told that the representatives of Barclays
8 responsible for negotiating the transaction had
9 done their best to estimate what the assets and
10 liabilities within the transaction were worth or
11 what their proper values were. But that that
12 was, as I say, an estimation.
13 So I believe that it was clear to the
14 board at the time from the representations made
15 by Barclays employees that in the time available
16 and in the circumstances again that I have
17 mentioned, Barclays had tried to estimate what
18 those values were, but couldn't be absolutely
19 sure.
20 Q. I've been asking you about disclosures
21 that were made to the board, and I'll broaden
22 that a little bit now to senior management. Are
23 you aware of any disclosures to members of
24 senior management that Barclays was unable to
25 quantify the maximum exposure of assuming the

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2 associated with those estimations, which is
3 different from an absolute quantification.
4 Q. And how did it do that?
5 A. I -- how did it, "it" meaning --
6 Q. How did management make that
7 assessment?
8 A. Fundamentally by taking
9 representations of value from Lehman Brothers
10 and where we were -- where Barclays was able to
11 make its own judgments as to those valuations
12 and reach conclusions off the back of that
13 analysis.
14 You mentioned exchange-traded
15 derivatives. I don't think that prior to
16 closing we had been given -- I may be wrong
17 about this -- it is possible there had been some
18 numbers discussed, but I don't think that there
19 was -- that it was clear at the time of closing
20 what the quantification of the assets and
21 liabilities may have been with respect to the
22 exchange-traded derivatives business itself.
23 Q. So with respect to that business, how
24 was it reasonable for management to make the
25 conclusion that it was in Barclays' interest to

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2 liabilities in this transaction?
3 A. When you say senior management, are
4 you excluding the board? Because the board is
5 not management.
6 Q. Yeah, I am excluding the board.
7 A. Right.
8 Again, I'm not aware of a disclosure
9 in the specific terms that you describe. It was
10 made clear on several occasions to senior
11 management that it was very difficult for
12 Barclays to conclude with certainty values with
13 respect to both assets and liabilities in the
14 transaction.
15 But I think senior management was
16 given enough inputs that it was reasonable for
17 it to conclude that it was acquiring or it was
18 concluding a transaction which ultimately would
19 be positive for the bank.
20 Q. And how was management able to make
21 that conclusion without quantifying what the
22 risk was of taking on the exchange-traded
23 derivatives business?
24 A. I think it was able to do it by
25 estimating and making judgments about the risk

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2 take on that business?
3 A. Primarily because it was acquiring all
4 of -- any type of asset of whatever form that
5 was held in connection with that business. And
6 I think there both were and are sufficient
7 numbers of expert people in the Barclays
8 organization to make an assessment about the way
9 the futures and options business is conducted,
10 such that if all of the assets that were held in
11 connection with that business were going to be a
12 part of the deal and come to Barclays, that
13 there would be a reasonable risk and a
14 reasonable estimation of risk to reach the
15 conclusion we did.
16 Q. And that's the piece I'm missing. How
17 was management able to come to that conclusion
18 that the assets would basically cover the
19 liabilities if they weren't able to quantify
20 what the liabilities were?
21 MR. STERN: Let me hear that again.
22 (Record read)
23 MR. STERN: I may be missing it in the
24 topics, but I'm just not sure where that
25 fits.

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2 MR. MAGUIRE: I think we are well into
3 a discussion, and we are simply following up
4 on the witness' answer.

5 MR. STERN: No, no, no.

6 MR. MAGUIRE: If you want to make an
7 objection or you want to direct the witness
8 not to answer, Jack, that's fine. I'm
9 not -- just so you know, I am not going to
10 spend the day referring you back and forth
11 to topics in the notice.

12 So I leave it to you. If you think
13 there is something inappropriate and you
14 want to take a position, then by all means,
15 but the proper way to do that is to direct
16 the witness not to --

17 MR. STERN: No, no. I am not trying
18 to be difficult, Bill. All I'm trying to do
19 is to clarify if you are asking Mr. Hughes
20 to testify to something he is prepared on
21 for this deposition or if you are asking
22 about his own personal knowledge aside from
23 his preparation. But I'm not trying to be
24 difficult.

25 I'll allow you to answer this. I'm

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2 just not sure that this is a 30(b)(6) topic
3 here.

4 So if you could repeat the question.
5 (Record read)

6 MR. STERN: I'll object and I think it
7 is asked and answered as well.

8 But go ahead. You can answer.

9 A. Management I think fairly relied upon
10 employees at Barclays who both understood the
11 nature and conduct of the exchange-traded
12 derivatives business and who were able to make
13 assessments with respect to that business at the
14 material time.

15 I believe that those assessments would
16 have included -- though I have not spoken
17 specifically to anybody about this exact
18 point -- but my belief is it would have included
19 recognition that by definition, exchange-traded
20 business in derivatives has to be conducted in
21 accordance with exchange-trading rules, and
22 included within those rules are requirements
23 that assets are always held in connection with
24 such business to, among other things, limit
25 exposures with respect to that business.

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2 So that people at Barclays able to
3 recognize those important issues were able to
4 form the view that to agree to acquire all of
5 the exchange-traded business was a reasonable
6 judgment to make at the time.

7 Q. The business that was being acquired
8 was exclusively exchange traded; is that right?

9 A. No. The only specific reference to
10 exchange traded was to exchange-traded
11 derivatives. As I said earlier, the business
12 that was being acquired was the whole of the
13 businesses in North America of Lehman Brothers.
14 So the exchange-traded derivatives business was
15 the -- was just one identified aspect of that
16 business.

17 Q. And were there off-exchange
18 derivatives that were also acquired by Barclays?

19 A. I wouldn't use the term "off
20 exchange." I would use the term "OTC
21 derivatives." OTC derivatives were excluded
22 from the transaction.

23 Q. So the assets that Barclays was
24 acquiring was exclusively exchange-traded
25 derivatives; is that right?

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2 A. No.

3 MR. STERN: Objection to the form.

4 Q. When you say no, within the
5 exchange-traded derivatives -- was Barclays
6 acquiring any derivatives other than
7 exchange-traded derivatives?

8 A. It depends how you define a
9 derivative. If by that you mean Barclays agreed
10 to acquire the exchange-traded derivatives
11 business but by contrast did not agree to
12 acquire the OTC derivatives business, then I
13 would agree with you.

14 Q. Do I understand from your previous
15 answer that the business people -- at least it
16 is your belief that the business people
17 understood that the exchanges require customers
18 to keep assets that offset any liabilities on
19 the exchange?

20 A. Could you repeat the question.

21 Q. Let me strike that.

22 Have you spoken to any of the business
23 people who made the assessment as to whether it
24 was reasonable for Barclays to acquire the
25 exchange-traded derivatives business?

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<p>1 J. HUGHES 2 MR. STERN: You mean in preparation 3 for the deposition or generally? 4 Q. In preparation. 5 A. I have not spoken to anybody in 6 preparation for today about the question you 7 pose with respect to the judgment made. 8 Q. Other than in preparation for today, 9 have you spoken to the people who made the 10 assessment that Barclays should acquire the 11 exchange-traded derivatives business? 12 A. I've spoken to at least two people who 13 were knowledgeable at the time about that 14 portion of the transaction. 15 Q. Who is that? 16 A. It would include Stephen King and Rich 17 Ricci. It's possible that I have spoken to 18 others over time, but I couldn't recall right 19 now specifically whether there were more or not. 20 Q. What have you spoken to Stephen King 21 about specifically with respect to how he became 22 comfortable that it was appropriate for Barclays 23 to acquire the exchange-traded derivatives 24 business? - 25 MR. STERN: Excuse me, I'm concerned</p>	<p>1 J. HUGHES 2 that this might call for a privileged 3 communication. I mean it is one thing if 4 you ask the witness as a 30(b)(6) witness 5 what facts he has learned concerning the 6 subject. But it is a different matter when 7 you're asking him about conversations. 8 So I would rather stick with the facts 9 that Mr. Hughes learned. 10 MR. MAGUIRE: Well, I'm only looking 11 for facts. I certainly don't want any legal 12 advice. 13 Q. All I am looking for is how Mr. King 14 made the assessment that whatever the 15 liabilities were in the exchange-traded 16 derivatives, it was nonetheless -- even without 17 quantifying them, it was nonetheless reasonable 18 for Barclays to acquire that business. 19 MR. STERN: If you know those facts, 20 you can testify to those facts, without 21 describing your conversation. 22 A. I don't think I can say that from my 23 specific discussions with Mr. King that we 24 addressed those facts as you describe them. I 25 would expect that in any discussion that I might</p>
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<p>1 J. HUGHES 2 have with a representative of Barclays who is 3 knowledgeable about the futures and options 4 business -- by using "options" in that sense, I 5 mean exchange-traded options -- that it would be 6 implicit in such a discussion that the 7 representative of Barclays would understand that 8 any exchange-traded derivatives position would 9 have associated with it assets at least in part 10 held to limit exposures with respect to those 11 positions. 12 So I can't recall any specific 13 discussion on the topic, but going back to your 14 earlier question, which I understood to be 15 related to assessments of exposures, I believe 16 that Barclays was in a position at least to 17 estimate that there were assets held in 18 connection with those exposures, albeit that it 19 was not at that point in time to establish 20 precisely either the actual exposures or the 21 value of the assets held in connection with 22 them. 23 Q. And without knowing the specific 24 amount of the assets or the -- or being able to 25 quantify what the liabilities were, how do you</p>	<p>1 J. HUGHES 2 understand Barclays' decision makers were able 3 to make the decision that it was reasonable to 4 acquire the exchange-traded derivatives 5 business? 6 MR. STERN: Objection, asked and 7 answered. 8 A. Again, I don't -- I don't think I 9 have -- let me start again. 10 I haven't had a discussion with 11 anybody of that particular type. It's my belief 12 that knowledge of the conduct of that business 13 allows a reasonable person to conclude, with 14 respect to exchange-traded derivatives business, 15 that exposures by definition are limited. They 16 are not at any point in time absolutely 17 quantified. 18 Indeed, outside of the context of this 19 transaction, I think it would be hard for 20 somebody ever to tell you that with respect to a 21 futures or options exchange-traded position, 22 that there was an absolute quantification of the 23 exposure. That may be feasible with respect to 24 some futures and options positions, but I don't 25 think it's fair to say it's feasible with</p>

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2 respect to all.

3 By definition, there is risk in an
4 open exchange-traded futures or -- not
5 exchange-traded futures, but exchange-traded
6 options or futures position.

7 Q. When you say the risk is limited by
8 the conduct of the business, are you including
9 in that the rules of the exchanges?

10 A. The rules of the exchanges and the
11 clearing houses that are associated with them,
12 and primarily what I am referring to there is
13 any form of collateral which is held in
14 connection with those exchange-traded positions.

15 Q. The need for collateral and the fact
16 that if you don't have collateral, the exchange
17 will liquidate the position?

18 A. Correct, in part. I guess it is more
19 accurate to say the exchange and/or the clearing
20 house has the right to do that. Whether it
21 chooses to do so or not is a matter for that
22 clearing house or exchange.

23 Q. We talked about Mr. King. Have you
24 had a discussion with Mr. Ricci specifically
25 about how it was reasonable to acquire this

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2 to conclude a transaction that yielded an
3 accounting gain. I believe there was authority
4 to conclude a transaction that was, from a
5 capital perspective, positive for Barclays.

6 I'm not aware of any discussion that
7 referred to an immediate gain. It's possible
8 that there was a discussion with respect to the
9 immediacy of a gain, but I think most
10 importantly the intention of Barclays and the
11 hope was that we would be able to conclude a
12 transaction that was positive in accounting and
13 capital terms and would have yielded an
14 accounting gain.

15 Q. Is it your understanding that based on
16 all of the work that the Barclays due diligence
17 teams did, that Mr. Diamond was properly in a
18 position to be highly confident in telling the
19 board that this transaction was capital
20 accretive?

21 A. I believe that was Mr. Diamond's view,
22 and I believe that it was supported by
23 sufficient information, albeit that that
24 information was qualified with respect to
25 certainty around values.

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2 business?

3 A. I have discussed with Mr. Ricci
4 whether or not it was clear to Barclays that
5 Barclays had intended to and had acquired those
6 businesses.

7 MR. STERN: I want to caution
8 Mr. Hughes not to disclose any privileged
9 communications with Mr. Ricci, and I'm sorry
10 for interrupting.

11 A. I think I was saying that I have -- I
12 have discussed with Mr. Ricci Barclays'
13 intention to and agreement to acquire those
14 businesses or that part of the business. I do
15 not recall speaking specifically with Mr. Ricci
16 about judgments of the type we have been
17 discussing in the last few minutes.

18 Q. OK. Did the Barclays negotiators have
19 authority from the board to close this
20 transaction if it did not produce an immediate
21 gain to Barclays?

22 A. The short answer to that is I don't
23 know. I do believe that there was authority to
24 conclude the transaction that was concluded,
25 first of all. I do believe there was authority

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2 But I think he was in a position to be
3 highly confident that it would be positive from
4 the bank's perspective.

5 Q. So none of the various uncertainties
6 that existed precluded Mr. Diamond from
7 accurately representing to the board that he was
8 highly confident this was capital accretive?

9 A. I think that's correct.

10 Q. When did Barclays first raise with the
11 SIPA trustee its demand for all of the assets in
12 the DTC clearance box?

13 A. Did you say the SIPA trustee?

14 Q. Yes.

15 A. Sorry, I thought you said SIVA.

16 Q. Maybe I did, but I meant to say SIPA
17 trustee.

18 A. I apologize. Could you repeat the
19 question.

20 MR. STERN: I take it this is
21 topic 10, communications between Barclays
22 and the trustee that occurred between
23 September 22 and December 23?

24 MR. MAGUIRE: Yes.

25 Q. I'm shifting gears, just so you know

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where we are.

A. I appreciate your shifting gears.

Q. And what I am now asking is communications -- you have had a number of communications with the trustee over the last long time, and they have involved from time to time Barclays' demand for the securities or assets that are in the DTC clearance box, right?

A. That's correct.

Q. And my question is, when did you first raise that issue with the trustee?

A. The subject of assets in the clearance boxes of Lehman Brothers was first raised between Lehman Brothers and Barclays on Friday, the 19th. At some point from the morning of Friday, the 19th -- let me say it again.

At various points, starting, I would think not before the morning of the 19th but during the period of the 19th to the 22nd -- when I say the 22nd, I mean by closing on the 22nd -- there were discussions relating to the assets in the clearance boxes that both Barclays representatives, be they internal or external, and I believe the trustee and/or the trustee's

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representatives participated in.

So if by your question you mean when were the assets in the clearance boxes first discussed among the trustee and its representatives and Barclays, I would say at some point during that period.

If your question refers to Barclays' desire that the trustee transfer those assets, then that first communication requesting a transfer I think necessarily happened at some point after, but close in time to the closing on the morning of the 22nd.

Q. And after the 22nd, when was the next time that Barclays demanded all of the assets from the DTC clearance box from the trustee?

A. I don't recall the first specific time. I do both recall and think there were several occasions upon which Barclays made that request and/or demand, and it was repeated on many occasions both directly and indirectly either to the trustee or to the trustee's representatives.

Q. Do you recall participating in any of those?

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A. Yes.

Q. And what's the first one that you recall participating in?

A. I don't recall exactly when -- I don't recall -- I don't have a personal recollection of exactly when.

Q. You couldn't pin it down to the month?

A. Again, without being able to pinpoint the moment, the place or the time, I think either I or people working with me made plain, certainly during September, and my belief is that consistently and persistently since the closing, we have made it plain that we demand from the trustee all of the assets you described.

I also believe that from my personal interactions with the trustee and the trustee's representatives, that it was clear both during the period of 19th to 22nd of September and at all times since then, firstly, that Barclays believes that the trustee agreed to transfer all of those assets, and that it has always been abundantly clear to the trustee that Barclays has an outstanding demand for those assets, and

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at no point in my many discussions that I have had with the trustee's representatives has anything different emerged with respect to that understanding.

Q. Let me shift gears and direct your attention to the clarification letter for the next series of questions.

A. OK.

Q. I believe you mentioned earlier that Mr. LaRocca left the sale hearing early?

MR. STERN: I said that.

MR. MAGUIRE: Is that right?

MR. STERN: Yes.

Q. Do you have an understanding as to why he left early?

A. No.

MR. STERN: I think what I said was that he was there originally and he left early because he thought there was a possibility that he would have to make arrangements for a closing.

MR. MAGUIRE: OK.

Q. Was it Barclays' understanding that the closing would follow right after the sale

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<p>1 J. HUGHES 2 hearing? 3 A. I think it was Barclays' understanding 4 that we would seek to close as soon after the 5 sale hearing as we could. 6 Q. And did you understand that a 7 clarifying letter was being prepared? 8 A. Yes, I believe a clarification letter 9 as it has subsequently become known was expected 10 to be completed. Indeed, I believe the drafting 11 of it had commenced prior to the sale hearing. 12 And ultimately it was concluded at or just 13 before the closing on the morning of the 22nd. 14 Q. Did Barclays understand that the 15 clarifying or clarification letter was intended 16 to change the economics of the transaction that 17 had been disclosed to the court? 18 A. No. I believe it was intended to 19 clarify some of the aspects of the transaction 20 for the benefit of the court, but also for the 21 benefit of all of the parties interested in the 22 transaction. 23 Q. And is it Barclays' understanding that 24 the clarification letter does in any way change 25 the economics of the transaction from what was</p>	<p>1 J. HUGHES 2 disclosed to the court? 3 A. I think in large part the economics 4 are not meaningfully different, because, as I 5 have said a few times, the economics of the 6 transaction were most appropriately assessed in 7 the context of the asset purchase agreement as a 8 whole, by which I mean the sale of the business 9 of Lehman Brothers as a whole. 10 To the extent there was any ultimate 11 economic difference, it's possible that after 12 the conclusion of the clarification letter and 13 the negotiations that surrounded it, that there 14 may have been a diminution in some of the assets 15 that Barclays received, but -- so for example, 16 there had been some discussions with respect to 17 some residential mortgages, just as an example, 18 and those discussions had taken place earlier in 19 the week. By the time the clarification letter 20 was concluded, those residential mortgages were 21 I believe unavailable, but in any event were not 22 part of the different categories of assets that 23 Barclays ultimately received or agreed would be 24 received. 25 Q. Did anyone at Barclays ever perform a</p>
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<p>1 J. HUGHES 2 valuation of what you refer to as the RESIs? 3 A. I believe that during -- while the 4 RESIs were being discussed as a possible portion 5 of the transfer of assets, there were some 6 attempts to value them. I'm not aware of any 7 particular -- sorry, let me start again. 8 I'm not aware of any conclusion to any 9 analysis that Barclays was able to conduct. I 10 believe that I can't now recall the full value, 11 but there were estimations of the values 12 presented by Lehman Brothers. 13 Q. And do you know whether Barclays ever 14 attributed any value to any of those RESIs? 15 A. I don't know whether we specifically 16 attributed value. I think there were -- that 17 the RESIs were included with the received values 18 applied to them by Lehman Brothers in certain 19 more detailed analyses around different 20 categories of assets and liabilities. They were 21 probably included in particular renditions of 22 what some of those different categories of 23 assets and valuations may have looked like. 24 So I think that Barclays used some of 25 those received values and presented them</p>	<p>1 J. HUGHES 2 together with other received values, among other 3 things, while trying to calculate what different 4 categories of assets and liabilities may 5 ultimately have been worth. 6 But I don't recall Barclays ever 7 coming to its own view about actually what those 8 RESIs were worth, if that's what you're really 9 after. 10 Q. That's what I really wanted to 11 understand, whether Barclays itself attributed 12 any value to the RESIs. 13 A. I don't think we reached a conclusion, 14 because in common with all of the numbers that 15 Lehman gave us, we were very conscious that they 16 were both presented as estimations and were 17 inherently uncertain. That's not true just of 18 the RESIs, but it was particularly true of the 19 RESIs, I think, because the valuation of 20 residential mortgages, leaving aside all other 21 asset classes, at that particular time was a 22 very difficult thing. 23 MR. STERN: Let me just consult with 24 the witness for a moment. 25 (Pause)</p>

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Q. Do you want to clarify your answer?

A. Yes, in the following way, just to establish that my answers to your questions are given in the belief that you're referring to a particular category of RESIs as you described them which had formed an identified asset within the negotiation, as distinct from residential mortgages as a whole.

Q. We are just talking about a specific category that was identified in the APA, residential mortgage-backed securities.

A. Yes. Identified in the APA prior to Friday, the 19th?

Q. Yeah.

A. Yes.

Q. And it is your understanding that none of those were included in any of the assets that were acquired by Barclays?

A. That's not my understanding. I don't know with certainty whether there were any of the components of the class we have thus far been describing as the RESIs that ultimately were delivered to Barclays.

I do believe that Barclays received

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some assets that you would describe as residential mortgage assets in transfers of assets from Lehman Brothers, be that assets received in the repo transaction, or it's possible the clearance boxes included them, though I think that's less likely. I don't particularly recall. But --

Q. And what about the fed settlement transfers from JPMorgan Chase? Do you know whether the RESIs were included in that transfer?

A. The RESIs, as you previously described them, I think were not intended to be included in that JP Morgan settlement. Again, I couldn't tell you whether -- what ultimately the makeup was of each of those different categories of assets, the repo, the JP Morgan settlement, the clearance boxes.

I believe that others are able to describe accurately, if they haven't already, what those -- what the makeup of each of those different pools was. Or is.

Q. With respect to the securities that were delivered as part of the fed settlement in

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December of 2008, you know what I am referring to?

A. I assume -- I think I do, but I typically refer to it as the JP Morgan settlement.

Q. That makes more sense, the JP Morgan settlement. Who would be the person who would know whether any of the RESIs were included in that?

A. I would think Stephen King would know the answer to that. I would think that it's possible that -- it's possible that Jim Hraska, Alastair Blackwell and other people working in the operations function at Barclays would be able to establish that.

Q. You described earlier how you believe that --

A. Sorry to interrupt you. Can I -- I'm not sure whether I made it clear earlier, but the RESIs as a defined term were not intended to be included, and so I believe it's fair to say that they were not.

There may, as I say, have been residential mortgages that were ultimately

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delivered in one or more parts of the total transfer.

Q. Did you understand that the court at the sale hearing had expressed a view that it would regard any changes in the transaction of -- certainly in the amount of 500 million dollars or more as being material?

MR. STERN: Objection to the form.

A. From my review of the transcript of the sale hearing -- and I must just note that for the -- for this particular purpose, I have not read that portion of the transcript, but my recollection of the transcript is that the judge was made aware that there were -- that the clarification letter was being finalized, that discussions were continuing with respect to some of the detailed terms, but the clarification letter was hoped to be concluded promptly, and that the judge wanted to insure that there were no material changes to the transaction or that if there had been or if there were to be material changes in the transaction, that there were -- there would be an opportunity for those interested to return to court to discuss any

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such material changes with him.

Q. And Barclays understood that?

A. Yes, I believe we did understand that. I believe we also had reached, prior to the sale hearing, an agreement with Lehman Brothers with respect to all of the terms of the transaction. I believe the clarification letter did clarify some aspects of that discussion and agreement, but that there were, in fact, no material changes to the transaction from the 19th through to the 22nd of September.

Q. Was it Barclays' view then that the clarification letter did not cause any material change to the transaction from what had been described to the court?

A. Correct.

Q. And there was no need then to return to the court to advise the court of the provisions or the economic deal as reflected in the clarification letter?

A. I believe that Barclays did conclude there was no need to return to the court to describe anything to the court. I believe that that was also the understanding of Lehman

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Brothers and its representatives at the time. I believe that representatives of Lehman Brothers considered whether that was necessary on the -- prior to closing and concluded that it was not necessary. And all of that was, is consistent with Barclays' understanding.

The court had already heard, as I said at the outset, that this was a transaction that was intended to deliver the whole of the business of Lehman Brothers in North America and not specific pieces of that business. The court understood that any valuations that had been given or described were no more than estimates of value.

I believe the court understood and all the interested parties understood that the -- that those valuations were uncertain and that therefore, there would be no representations or warranties about any aspect, any valuation aspects of the deal.

I believe that Barclays and Lehman Brothers and its respective representatives understood that all the interested parties, be they the estate, the trustee, the creditors

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committee, had all participated in all the relevant discussions associated with the transaction, and most particularly with respect to all aspects of the clarification letter, and that everybody who had an interest had an opportunity to review those terms, to review -- to participate in discussions and to reach agreements about them.

I also believe that the fact that for a considerable period of time, nobody who was either a participant or interested in the proceedings did, in fact, go back to the court to ask the court to review that clarification letter suggests to me that that was everybody's belief at the time.

Q. Did Barclays consider going back to the court to present the clarification letter?

A. No, we did not, and Weil Gotshal I believe did file the clarification letter with the court on the 22nd, I believe.

Q. Did Barclays consider going back to the court to disclose the amount of the clearing fund and margin that it was acquiring in the transaction?

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A. Barclays --

MR. STERN: I am going to object to the form. Just to be clear, when you talk about consider, you're not calling for attorney/client communications.

Q. Just the business.

A. Can you describe what you mean by the clearing fund?

Q. Just whatever Barclays is claiming by way of collateral held to secure exchange-traded derivatives, I'm including that and margin together.

A. Well, I wouldn't use the term "clearing fund" for that purpose.

I think your question is, did we consider going back to the court with respect to those sorts of property, and the answer is no.

Q. And why wouldn't you include clearing fund in that?

A. I just -- I just wouldn't use the term "clearing fund" because it is -- it is not clear to me exactly what you mean by it, but also, it would, it would likely be just one portion of a greater whole, namely, any property of any

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description that was relevant to the exchange-traded futures and options business.

But there was no need to go back to the court for -- on any portion of that, because the agreement was already clear to the court.

Q. Can you tell me in -- how it was clear to the court that Barclays would be acquiring margin?

A. It was clear to the court because margin is necessarily part of the exchange-traded business of Lehman Brothers.

Q. And was there any disclosure to the court of the amount of the margin that Barclays was acquiring?

A. I don't believe there was a figure given with respect to it.

Q. What about with respect to the 15c3 asset? Are you aware of any disclosure to the court that Barclays was acquiring the 15c3 asset?

A. I believe the court was told that there was to be -- I can't be certain about this, but I believe the court was told that there was to be transfer of a 15c3 asset, as you

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describe. I can't remember whether there was any quantification of that.

Q. And when you say the court --

A. Specifically.

Q. -- the court was told, you are saying in the on-the-record session on the 19th?

A. I believe so. But I could be wrong about that.

Q. Can you tell me how it was clear to the court that Barclays was obtaining as part of this sale the assets in the clearance boxes?

A. The assets in the clearance boxes were unencumbered assets of the business of Lehman Brothers and were purchased assets as defined -- purchased assets had been defined in the asset purchase agreement which was disclosed to the court, and so I think from all of that, if nothing else, it was clear to the court.

Might I just refer back to one of your earlier questions, because as I think further on the topic of margin, I believe that in the sale order, there is reference to margin, and I think -- I don't always remember paragraph numbers or letters clearly, but I think there is

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paragraph N in the sale order which makes particular reference to margin, and I think again, from that, I did -- I think it is clear that the court understood that the margin and collateral held with respect to the exchange-traded derivatives business was also -- was included within the transaction and included within the assets to be transferred to Barclays.

I might just add furthermore that I think it would have been very surprising to Barclays, indeed to most onlookers, that -- if margin or collateral held with respect to that exchange-traded business was not included. Indeed, I think it would be shocking if it had not been included.

MR. STERN: Let me ask you a question in terms of timing. Are you planning to break for lunch around 1 o'clock or earlier? If we are going to break around 1:00, I would like to take a five-minute break now. If we are going to stop around 12:30, then we might as well keep going.

MR. MAGUIRE: Why don't we take a break and I'll check on lunch.

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MR. STERN: OK, just five minutes.

MR. MAGUIRE: Yeah.

(Recess)

BY MR. MAGUIRE:

Q. The witness wishes to add something to a previous answer?

A. Yeah. Just, you asked me more than one question about what was clear to the court and why. I think it is just worth noting that all of the relevant commentary or description to the court was presented by Harvey Miller and other representatives of Lehman at Weil Gotshal. Indeed, I think there was an actual agreement that Barclays would not be allowed to make any representations to the court without some prior agreement. He may even not have included that proviso.

But fundamentally all the representations to the court and all of the determinations or judgments made about what was appropriate to be described to the court were made I think essentially by Harvey Miller and Weil Gotshal on behalf of Lehman Brothers.

I don't know whether that's helpful,

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but I think it was as a factual matter the way it was done, and therefore what was made clear to the court, to use your terms, was made clear largely by Harvey Miller, sometimes by Lori Fife. By agreement, Barclays didn't really have the opportunity to make those determinations or judgments.

Now, I believe that in fact Harvey Miller and others gave a very fair and accurate rendition of the transaction. And indeed they didn't change beyond -- after those descriptions had been given.

In any event, I thought that would be useful to add.

Q. What's the agreement that you referred to?

A. I can't remember exactly where it appears, but I believe there was a provision in one of the transaction documents in which it was agreed that the transaction would be described to the court only by Weil Gotshal. I can't remember its precise terms, but that was the -- that was the effect of it.

Q. Did Barclays believe that it was

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constrained and unable to say anything to the court that it felt appropriate concerning the transaction?

A. I don't know whether people at court at the time felt that, but I think that that provision did exist. I don't think that Barclays felt that it hurt anything or that it was either unfair or inaccurate. And nor do I think that anybody who was present felt there was any need on Barclays' part to say anything.

So I don't raise the point to suggest that there might have been such a need on Barclays' part, but just to make plain that to the extent there were comments made at court by anybody, they were, they were in large part, if not in fact in totality, made by Harvey Miller and other representatives at Weil Gotshal.

Q. You think you could find that provision that you're thinking of and tell us what it is?

MR. STERN: I can find it. In the APA, I believe it's Section 7.2.

MR. MAGUIRE: That's appreciated. Thanks.

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MR. STERN: Which states, "Purchaser shall not, without the prior written consent of seller, file, join in or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the purchased assets."

Q. And did you understand there was any need for you to get any such consent?

A. I think there was a need to get consent if we felt the need to say anything or make any representation or make any filing with respect to the sale up until that point, but I don't think anything happened or anything was said that led anybody at Barclays who was present to think that there was any need for anybody at Barclays to say anything.

Q. Right.

Now, did you understand that the purpose of the sale hearing was for the court to determine whether or not to approve the sale?

A. Yes.

Q. And did Barclays understand that it was important for the court to understand the economics of the transaction in making that

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determination?

MR. STERN: Objection to the form. Vague.

You can answer.

A. I think the court had to take a gander at a whole variety of issues with respect to the transaction in order to determine whether to approve it or not. I think it is clear from the transcript that there were, there were many issues to be taken account of, most notable among which I believe were the extreme circumstances of that period in financial markets, and the pressing need in time -- not least in terms of timing, to preserve as much value as possible in the estate, in the business, for the benefit of the estate, the creditors, and a whole variety of additional people associated with Lehman Brothers, and indeed for the benefit of the economy as a whole.

And I think that those driving forces behind the transaction and the need to act quickly to preserve that value in the business and in the estate for all of those parties comes

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2 across quite firmly as, not the only factors,
3 but certainly among the most important.

4 So economics is part of that
5 certainly, but it is not of itself the single
6 issue.

7 Q. So one thing but by no means the only
8 thing that the court needed to have an
9 understanding of was the economics of the
10 transaction; is that correct?

11 MR. STERN: Objection to the form.

12 A. I think the court had to understand
13 the transaction, yes.

14 Q. And did Barclays believe that the
15 court had an understanding of the economics of
16 the transaction?

17 MR. STERN: Objection to the form.

18 A. I'm not sure I know exactly what you
19 mean by economics. I believe the court
20 understood that the transaction was proposed and
21 indeed did transfer to Barclays the business of
22 Lehman Brothers in North America, and I believe
23 it gained a clear understanding of those
24 detailed aspects of that transaction that Harvey
25 Miller and Weil Gotshal determined were

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2 You have already asked that question. Are
3 you asking again?

4 MR. MAGUIRE: No, no. I asked that
5 question, you're right. The witness
6 answered with respect to the specific
7 components of the total value. That's not
8 what I want.

9 Q. What I want is whether Barclays
10 understood that the court had an understanding
11 of the total value of all of the assets that
12 Barclays was acquiring.

13 MR. STERN: Objection to the form.

14 A. I believe the court understood certain
15 estimations of value, most importantly
16 understood that those valuations were estimates,
17 but that more importantly, to understand the
18 transaction, the court understood everything it
19 needed to, to be able to approve the
20 transaction.

21 Q. So I am still waiting for you to
22 explain to me whether Barclays believed the
23 court was told what the total value was of the
24 assets that Barclays was acquiring.

25 MR. STERN: Objection to the form.

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2 appropriate to display to the court, be it on
3 the 17th or the 19th or in a clarification
4 letter that was filed on the morning of the
5 22nd.

6 So I believe that the court had a very
7 clear understanding of the transaction.

8 Q. Does Barclays believe that the court
9 had a clear understanding of the total value of
10 the assets that Barclays was acquiring?

11 MR. STERN: Objection to the form.

12 A. I believe the court understood that
13 it -- that the transaction included assets and
14 liabilities that people had made a good faith
15 effort to value, but whether or not the court
16 felt that it had an exact valuation for each and
17 every asset or liability, I doubt. But I don't
18 think that any part of the transaction or an
19 understanding of it required that degree of
20 exactitude or certainty.

21 Q. I'm not asking you about specific
22 parts. I'm asking you whether Barclays believed
23 that the court understood the total value of the
24 assets that Barclays was acquiring.

25 MR. STERN: Objection to the form.

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2 A. I believe the court was given an
3 estimation of that total value.

4 Q. And what was that estimation?

5 A. I don't know what the total number
6 was. I don't think a total number was actually
7 given.

8 Q. So you're saying there were a couple
9 of numbers that were given to the court, and if
10 you were to add those numbers up, you would get
11 the total value of the assets that Barclays is
12 acquiring; is that what you are saying?

13 MR. STERN: Objection to the form.

14 A. No, I am not saying that. I am saying
15 in the APA and through the various
16 representations of Harvey Miller, Lori Fife and
17 so on, that some numbers were given. The court
18 understood that those were estimations. The
19 court understood from the various
20 categorizations of assets what the total assets
21 were that were included and described in the
22 transaction.

23 I'm not aware that a total number was
24 ever given for that. And again, I don't think
25 the court either expected at the sale hearing or

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2 needed at the sale hearing a total number, an
3 exact number for the total amount of assets or
4 liabilities, because that wasn't the deal. The
5 deal was Lehman agreed to sell and Barclays
6 agreed to buy the North American businesses of
7 Lehman Brothers.
8 The court understood, it was very
9 clear in the asset purchase agreement, it was
10 not possible at that particular point in time to
11 give an absolute amount for the total assets or
12 liabilities, and that's why nobody ever
13 represented or warranted anything about those
14 total values.
15 So to come back to your question, I
16 don't think the court heard a specific number
17 for the total value of assets and liabilities,
18 but I believe that that was not necessary. It
19 was not contemplated as part of the transaction.
20 Had it been a different type of transaction,
21 often referred to as a balance sheet
22 transaction, it might have been different. But
23 that was not the deal.
24 Q. At the time that the court approved
25 the sale then, did the court know what the total

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2 differently then. Did the court have the
3 ability based on what was presented at the sale
4 hearing to figure out roughly, not precisely or
5 with certainty, but roughly what the total value
6 was of the assets that Barclays was acquiring?
7 MR. STERN: Objection to the form.
8 A. I think the court had the opportunity
9 to understand the values of the categories of
10 assets that were to be delivered. I'm not aware
11 that at any point every single one of those
12 categories was given a valuation during the sale
13 hearing.
14 But I don't think that it was
15 necessary for the court to hear specific values
16 with respect to each and every category of
17 assets in order to make a judgment as to whether
18 it made sense or was the right thing to approve
19 the transaction.
20 Q. In each of your answers, you have
21 referred to specific categories, and for my next
22 series of questions, I don't want to address
23 specific categories. What I want to address is
24 the overall economic result and specifically the
25 total value of all of the assets that were

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2 value of the assets was that Barclays was
3 acquiring?
4 MR. STERN: Objection to the form.
5 You can answer.
6 A. I'm pausing because I'm trying to
7 think of a different way of answering the same
8 question.
9 I think the court had been given
10 estimations of values. I think the court
11 understood that they were estimations. I'm not
12 aware of a total number that was presented to
13 the court as a precise number for those total --
14 for those total values.
15 I believe it's clear from the
16 transcript that the court understood
17 sufficiently the value of assets and
18 liabilities, and understood that in approving
19 the transaction, there was an opportunity to
20 preserve those values, and not to do so would
21 likely not only destroy those values but destroy
22 lots of other value too.
23 I'm not sure I can say it in any other
24 way.
25 Q. Did the court -- let me put it

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2 included in the sale.
3 Did Barclays understand that the court
4 would be interested in knowing what the total
5 value of the assets that Barclays was acquiring
6 was?
7 MR. STERN: Objection. Before you
8 answer that, I'll object to the form, and
9 you can try to answer that again.
10 Did Barclays understand that the court
11 would be interested in knowing. You can
12 answer that if you understand it.
13 A. I don't know what Judge Peck was
14 interested in knowing about the total value of
15 assets. I do believe that the court was
16 interested in understanding the transaction and
17 its salient elements in order to determine
18 whether it was the right thing to approve the
19 sale.
20 I think the court heard fair and
21 accurate descriptions of some assets and their
22 estimated values, and again, that that was
23 sufficient for the court to make a judgment.
24 The ability to calculate total values with
25 respect to all of the assets was probably not --

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<p>1 J. HUGHES 2 let me say that again. The ability to 3 accurately value the total amounts was dependent 4 on a whole variety of additional factors that 5 were hard to describe at that point in time. 6 So I think the court made its 7 assessment recognizing that. To take one 8 example, a number of the securities that 9 Barclays received in the transaction were not 10 capable of being accurately valued by Barclays 11 specifically at that point in time. Indeed, I 12 think you have heard from other Barclays 13 witnesses that an enormous amount of effort was 14 required to come to specific valuations with 15 respect to particular assets. 16 And that was one of the difficulties 17 of the week and one of the risks that Barclays 18 took in agreeing to acquire certain types of 19 assets in the transaction. 20 Q. Did Barclays believe that the court 21 could approve a sale without knowing what the, 22 at least on an estimated basis, what the total 23 value of the assets were that Barclays was 24 acquiring? 25 MR. STERN: Let me just think about</p>	<p>1 J. HUGHES 2 this, because I'm concerned that this 3 question now intrudes on the attorney/client 4 privilege, and the advice that -- 5 A. I think I agree with that actually. 6 MR. STERN: I don't know if there was 7 any advice on this subject, but if there 8 was, it would be privileged. 9 I think I'll instruct you not to 10 answer this, and you can formulate a 11 different question. 12 Q. And I take it you will follow the 13 advice of your counsel? 14 A. As always. 15 Q. Did Barclays consider disclosing to 16 the court the values -- let me strike that. 17 Was the court told of the total 18 liabilities that Barclays was acquiring in the 19 transaction? 20 MR. STERN: That you can answer. If 21 you remember. 22 A. I think the answer to that is no. I 23 won't repeat all of the attendant descriptions 24 that I gave you with respect to the assets, but 25 the same commentary applies to liabilities as it</p>
Page 104	Page 105
<p>1 J. HUGHES 2 does to assets. 3 Q. Can you tell me what were the most 4 significant liabilities that were not disclosed 5 to the court? 6 MR. STERN: Objection to the form. 7 A. I don't think any meaningful liability 8 was not disclosed to the court. 9 Q. And then can you tell me in what 10 respect was there not a full disclosure to the 11 court with respect to the liabilities that 12 Barclays was assuming? 13 MR. STERN: Objection to form. 14 A. I didn't say that. 15 Q. Let me ask you that question. Was 16 there a full disclosure to the court of all of 17 the liabilities that Barclays was assuming? 18 A. Yes. 19 Q. Was there a full disclosure to the 20 court of all of the assets that Barclays was 21 acquiring? 22 A. I believe so, yes. 23 Q. With respect to the liabilities, was 24 there a full disclosure with respect to the 25 value of those liabilities?</p>	<p>1 J. HUGHES 2 MR. STERN: Objection to the form. 3 A. If by full disclosure you mean 4 disclosure of what the court needed to know with 5 respect to those assets and liabilities, my 6 answer is yes. 7 Q. Did that full disclosure include what 8 the overall estimated value of the assets were? 9 MR. STERN: Objection to the form. 10 A. I think as I said a moment ago, and I 11 really was trying not to repeat the lengthy 12 answers I gave you with respect to assets, that 13 the court heard estimations of value with 14 respect to some liabilities. Those estimations 15 were given by representatives of Lehman 16 Brothers, and I think they were a fair and -- a 17 fair description, given with the best intentions 18 and by people who had tried under very difficult 19 circumstances to come up with real, accurate, 20 precise numbers for all of those liabilities and 21 indeed the assets. 22 But they were estimations, and 23 everybody understood them to be that. 24 Q. At the time that the liabilities were 25 estimated to the court, did Barclays believe</p>

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<p>1 J. HUGHES 2 that those estimates were appropriate? 3 MR. STERN: Objection to the form. 4 A. There were estimations of liabilities 5 that Barclays received from Lehman Brothers both 6 during the week. Some of them were described on 7 the 17th. Some of them were described on the 8 19th. 9 Barclays was -- there was no reason 10 that I can recall or that anybody has recalled 11 to me to believe that there wasn't a good faith 12 effort made by the Lehman Brothers 13 representatives to come up with those 14 valuations. There was certainly disagreements 15 with respect to valuations during the course of 16 the week, with respect to some of the assets. 17 Whether we made a judgment specifically with 18 respect to all of them and were able to conclude 19 that they were all accurate, I don't think we 20 had that ability at that time. 21 Some of the information was 22 necessarily information of the type not only 23 that Barclays could not have had in its 24 possession other than by receiving it from - 25 Lehman Brothers, some of it was information</p>	<p>1 J. HUGHES 2 which we had no ability to test. 3 Q. Did you have any reason to disagree 4 with the numbers that were presented by Weil 5 with respect to liabilities? 6 A. Represented by Weil when? 7 Q. At the sale hearing. 8 A. At the sale hearing? There was 9 nothing that Weil said at the sale hearing that 10 to the people present seemed to be wildly 11 inaccurate or in any way misleading to anybody 12 with respect to values. 13 As I said more than once, they were 14 not -- by "they," I mean the people at Barclays 15 present, were not privy to the basis upon which 16 those numbers were arrived at. But there was 17 nothing that any of them heard at the time, and 18 there is nothing that, on reviewing the 19 transcript, that suggests to me that there was 20 either any confusion or any meaningful 21 inaccuracies, albeit bearing in mind the proviso 22 neither I nor the Barclays representatives sat 23 with Harvey Miller or anybody else to figure out 24 what the numbers should look like. 25 Q. There were certain assets -- you</p>
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<p>1 J. HUGHES 2 described earlier how there were certain long 3 positions that were identified as 47.4 billion 4 dollars. You recall that? 5 MR. STERN: Objection to the form. 6 A. Again, I don't think I did say that. 7 I think you said that. 8 Q. OK. What did Barclays understand was 9 included within the 47.4 billion dollars that 10 Ms. Fife represented to the court? 11 MR. STERN: I will object. 12 But I will let you answer, but this 13 has been asked and answered. 14 A. I believe I did answer that question 15 earlier. I believe what I said, what I now 16 believe is that the number you are referring to 17 was a number given by Lori Fife to describe 18 changes, as best I can tell from the transcript, 19 with respect to numbers that had previously been 20 given and previously described as long 21 positions. 22 I do not know, nor have I been able to 23 find anybody that does know, exactly what Lori 24 Fife intended to say by that number. I can tell 25 very clearly from the transcript that her</p>	<p>1 J. HUGHES 2 primary aim was to describe from that part of 3 her presentation what -- a change in what she 4 viewed as the valuation of some assets that were 5 previously agreed to be transferred in the sale. 6 As it happens, or as things turned 7 out, it was largely a meaningless, in my view, 8 description -- "meaningless" is the wrong word. 9 It was -- it was not a full description of some 10 additional points which were then later dealt 11 with, by which I mean the long positions as 12 previously described related to a part of the 13 negotiation, which by the sale hearing had 14 changed, and by the sale hearing the securities 15 that had previously formed that 70 billion long 16 position were no longer either in character or 17 by type the same securities that were going to 18 be acquired, because by the sale hearing, there 19 had been the intervention of a repo transaction 20 which changed the meaning of that 70 billion in 21 any event. 22 Q. Now, did Barclays understand whether 23 the 47.4 that Ms. Fife represented to the court, 24 whether that included the repo securities? 25 MR. STERN: Objection to the form.</p>

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Asked and answered.

A. Again, I don't know what Lori Fife included. I think my best reading of the transcript is that she intended to include securities that were -- that formed -- that were part of the repo. I can't say whether she had included all of those or whether she had included additional securities. But again, they were all estimations, whether they referred to the repo securities or some of the repo securities or whether it referred to other assets.

Q. Did Barclays understand the 47.4 billion number to include the 15c3 asset?

MR. STERN: Objection to the form.

Asked and answered.

A. I don't think she was referring to the 15c3 asset at that point in time. But again, I don't know, for the reasons I've already described.

Q. Did you understand that Ms. Fife's 47.4 billion included the clearance box assets?

MR. STERN: Objection to the form.

Asked and answered.

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attended to. But I don't recall anybody at Barclays break -- attempting to break down that 47.4 number at the time, because I don't think anybody thought it was necessary or worthwhile to do so.

Q. Did Barclays understand that the 47.4 billion did not include a number of additional assets that were part of the sale?

MR. STERN: Objection to the form.

A. It --

MR. STERN: Let me hear the question again.

MR. MAGUIRE: Well, let me put it slightly differently.

Q. I take it from your earlier testimony that Barclays' view at the time of the sale hearing was, when Ms. Fife said, mentioned the 47.4 billion dollar number, Barclays understood that did not -- that referred to some but by no means all of the assets that Barclays was acquiring?

MR. STERN: Objection to the form.

You can answer.

A. I think it by definition did not

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A. I don't know the constituent parts of the 47.4. As I said earlier, the clearance box assets were clearly within the definition of purchased assets. And so whether or not they were, I think was not a matter of significance at the time.

MR. STERN: I think it is after 1 o'clock. Are we going to take a lunch break?

MR. MAGUIRE: Yeah. We will go another five or ten minutes, and then we will take a break.

Q. Did you understand the margin to be included in the 47.4? Did Barclays understand that?

MR. STERN: Objection to the form.

A. I'm not -- I don't think that the people who were present at the time were considering specific assets, specific valuations and whether they were at that point in time included in the number.

And again, I think the reason for that is that the margin and other specific assets that were clearly purchased assets were already

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include all of the assets, because all of the assets had been described already in the APA. So she didn't need to refer to that part of the APA, because it was clear to all that that was the better description of the transaction and the better description of the assets.

Why she used that particular number, I haven't been able to establish.

Q. Did Barclays understand that the additional assets that were not included, whatever they were, that were not included in the 47.4, that the court would want or need to know what the value of those assets was in order to understand the economics of the deal?

MR. STERN: Objection to the form.

A. Well, first of all, as I said earlier, I don't view any of the assets that you are referring to as additional assets, first and foremost.

And I'm not meaning to be pedantic. It is just by definition impossible that if -- that an identified asset that is already part of the business that we were acquiring would be an additional asset.

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<p>1 J. HUGHES 2 I think the court, as I have said 3 again earlier, heard descriptions of some of the 4 assets and heard sufficient descriptions of 5 assets and liabilities to enable it to take 6 those estimations, add that to the additional 7 factors that were important, to determine 8 whether to approve the transaction or not, and 9 it came to an appropriate conclusion. 10 Q. Did the court know the total value of 11 the assets that Barclays was acquiring at the 12 time that it approved the deal? 13 MR. STERN: I think at this point this 14 question has now been asked three or four 15 times. I'm really -- I think at this point 16 we should take a break for lunch and maybe 17 you should review your outline. 18 MR. MAGUIRE: Why don't we get this 19 answer, and then maybe you are right. 20 MR. STERN: I am actually going to 21 instruct him not to answer, because I think 22 this is now getting past the point. So if 23 you have another question, you can ask that. 24 MR. MAGUIRE: All right. We will take 25 our break at this point and reserve our</p>	<p>1 J. HUGHES 2 rights. 3 MR. STERN: Good. 4 (Luncheon recess) 5 BY MR. MAGUIRE: 6 Q. When did margin become part of the 7 sale transaction? 8 A. When did margin become part of the 9 sale transaction? At the beginning. 10 Q. In the original APA? 11 A. It was agreed orally before it ever 12 got reduced to writing in the APA, but it was 13 subsequently included in the APA. 14 Q. When you say it was agreed orally, who 15 from Barclays agreed to that? 16 A. I haven't asked that specific question 17 of anybody, so I can't tell you a specific 18 answer. The people negotiating on behalf of 19 Barclays at that time, and indeed throughout, 20 included the names we mentioned before, Michael 21 Klein, Archie Cox. 22 There were also a number of people in 23 the early part of the week of the 15th 24 discussing certain types of assets, and it is 25 probable, though I haven't yet checked, that</p>
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<p>1 J. HUGHES 2 there was a discussion among some of those 3 people with respect to the exchange-traded 4 derivatives. 5 Q. Let me be clear, because you referred 6 in your answer to exchange-traded derivatives. 7 I'm going to address my questions specifically 8 to margin as opposed to exchange-traded 9 derivatives. 10 Do you know whether there was a 11 discussion between Barclays and anyone at Lehman 12 concerning margin, specifically using that word 13 "margin" as opposed to some general reference to 14 exchange-traded derivatives? 15 MR. STERN: I am going to object to 16 the form. 17 You can answer if you understand the 18 term. 19 A. I was going to ask you, what do you 20 mean by "margin"? 21 Q. You have referred to, earlier, to 22 collateral that was at exchanges where Lehman 23 was a member. 24 A. Yeah. 25 Q. I take that as meaning margin.</p>	<p>1 J. HUGHES 2 Are you aware of any discussions 3 between Barclays and Lehman concerning the 4 collateral that Lehman had deposited with the 5 exchanges where it traded derivatives? 6 A. I believe there were discussions 7 between representatives of Barclays and 8 representatives of Lehman and indeed involving 9 representatives of the trustee, possibly also 10 the creditors committee, between Friday, the 11 19th, and the 22nd, which related to margin as 12 you have just described it. 13 I'm not aware that there was any 14 specific reference to margin prior to the 19th. 15 Nor does that surprise me. 16 Q. And it doesn't surprise you because 17 you understand margin to be included in the 18 transfer of exchange-traded derivatives? 19 A. It would be shocking to me if anybody 20 thought it was otherwise. 21 Q. Are you aware of any decision on the 22 part of Barclays to acquire any part of Lehman's 23 futures business independently of whether this 24 sale transaction closed? 25 A. I'm not sure I understand. I'm not</p>

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<p>1 J. HUGHES 2 sure I understand the question. 3 Q. Are you aware -- did Barclays have any 4 discussions with anyone from Lehman or the 5 Chicago Mercantile Exchange concerning taking on 6 any part of Lehman's futures business? 7 MR. STERN: Objection, to the form. 8 A. When? 9 Q. In the week or so prior to the sale. 10 A. When you say the week or so prior to 11 the sale, do you mean the week preceding the 12 19th or the week preceding the 15th? 13 Q. Any of that two-week period up to the 14 19th. 15 A. There were -- there was an agreement 16 reached during the week of the 15th, and indeed 17 an agreement -- that agreement was recorded in 18 the APA, certainly by the 17th, when it was 19 filed with the court, for Barclays to acquire, 20 among other things, the FCM business of Lehman 21 Brothers. In other words, the futures 22 commission merchant business of Lehman Brothers, 23 which included the exchange-traded derivatives 24 business. 25 And that being the agreement, it was</p>	<p>1 J. HUGHES 2 clear to the parties that margin, as you 3 previously described it, among other things, was 4 included in that part of the agreement. 5 Q. And you say it was clear because -- 6 can you explain why it was clear? 7 A. Because the -- because it was clear 8 that the agreement was to transfer the assets 9 and all the assets and liabilities of that 10 business. So that necessarily would include 11 collateral, margin held in connection with that 12 business. 13 Q. Did Barclays provide any guarantee to 14 the Chicago Mercantile Exchange of any -- of 15 Lehman's settlement obligations at any time 16 prior to September 22? 17 A. Any guarantee to the CME prior to the 18 September -- prior to September 22? 19 Q. Yes. 20 A. Not that I am aware of. 21 Q. Did Barclays consider providing such a 22 guarantee to the CME at any time prior to 23 September 22? 24 A. I'm not aware of any such 25 consideration. I think it unlikely that</p>
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<p>1 J. HUGHES 2 Barclays would have given a guarantee with 3 respect to aspects of the sale transaction 4 before closing. Or at least before it was clear 5 what the closing terms were going to be. 6 Q. I am going to ask you about your 7 testimony concerning margin and the APA, so I 8 will show you a copy of the final APA. It is 9 without all the schedules, but it has all the 10 provisions. 11 Can you point me, sir, to where the 12 APA undertook to convey margin to Barclays. 13 A. I think the first reference comes in 14 the definition of "business." And I should just 15 add that I have not reviewed the asset purchase 16 agreement with that specific question in mind. 17 So for me to be able to pick out quickly each 18 and every part of the APA which is relevant to 19 assessing whether the margin associated with the 20 futures commission merchant business, for 21 example, was included, would obviously take me a 22 while. There are several aspects of it. 23 But it certainly starts with an -- 24 with the definition of business, which as you 25 will see on page 2 includes the words "business</p>	<p>1 J. HUGHES 2 as a futures commission merchant." In my view, 3 that includes, particularly if one adds other -- 4 I think there are additional facets of the 5 agreement that are relevant for this purpose, 6 but I would have to look through it to be 7 absolutely sure, but I think that the 8 acquisition of the futures commission merchant 9 business includes margin, collateral held in 10 connection with that business. 11 Q. So is it Barclays' understanding that 12 this definition picks up any margin that Lehman 13 had at any exchanges? 14 MR. STERN: The only concern I have 15 about this is whether you're calling for 16 privileged information. If you are asking 17 Mr. Hughes to interpret the contract, my 18 concern is that is -- his interpretation of 19 the contract is privileged. 20 MR. MAGUIRE: If you want to direct 21 him not to answer, we can move along. 22 All I'm looking for is Barclays' -- 23 Barclays has an understanding, it has a 24 claim. I'm simply asking where in the 25 contract is the source of that claim.</p>

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MR. STERN: You are asking about a contract interpretation. Let me just confer.

Let's just step out for a second and confer about that.

MR. MAGUIRE: The record will reflect that the witness has stepped out of the room with his counsel.

(Pause)

(Mr. Stern and the witness return to the room)

MR. STERN: I have just conferred with the witness off the record, and I am going to instruct the witness not to answer questions that call for interpretation of the contract, because that does invade the privilege.

MR. MAGUIRE: Just so we are clear, you are directing the witness not to answer the last question?

MR. STERN: Correct.

MR. MAGUIRE: And any other questions asking for Barclays' understanding of provisions of the contract?

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MR. STERN: Correct. Anything calling for interpretation, correct.

Q. Did you understand that Barclays undertook any additional liabilities or assumed any additional liabilities over the weekend of the clarification letter? By additional, I mean any liabilities that it had not already agreed to under the APA.

A. I don't think so. no. That I can now recall.

Q. You're familiar with the transfer and assumption agreement?

A. I think so, yes.

Q. Did that in any way change the economics or the fundamentals of the APA?

A. Again, I have been instructed by my counsel not to interpret contracts. My answer is not an interpretation of the contract.

My -- Barclays' understanding of the transfer and assumption agreement in essence is that it was a document designed to achieve a couple of things. One, to assure the OCC that certain liabilities at Lehman Brothers and certain assets of Lehman Brothers were to be

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transferred in a particular way.

And secondly, it was a more detailed description of what would happen to certain portions of the exchange-traded derivatives business as a result of the sale.

My understanding further is that the TAA was the subject of discussions among the OCC, the trustee, Barclays, possibly also including the estate and ultimately the LBHI estate and the creditors committee. But most notably among -- an understanding among the OCC, the trustee and Barclays with respect to the transfer of OCC margin.

And I believe that the agreement, when ultimately signed, was the culmination of quite a lot of communications among those parties. Again, designed primarily to assure the OCC what would happen to margin. And included in those communications, as I understood them, was some urgency on the part of OCC to have the trustee agree that all forms of margin, whatever their description, should -- needed to be agreed to be delivered -- needed to be delivered to Barclays in order to assure the proper transfer of all of

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that collateral.

I believe there were many, many communications from the OCC and indeed back from the trustee that record that understanding among those parties, that all of that collateral, in whatever form, was to go to Barclays. I believe that what was ultimately signed -- sorry, the terms ultimately signed and encapsulated in the transfer and assumption agreement not only did establish the agreement for the transfer of all of that margin, but was consistent with the broader agreement that had already been reached among the parties and which everybody at that point plainly was aware of.

So the TAA, as you described it, was at a slightly greater level of detail than had been mentioned in the APA, but was entirely consistent with it, and I think was, as it related to the OCC, the effective document that it needed to properly transfer collateral that was previously with LBI in connection with its -- held by LBI in connection with its business as an FCM to Barclays.

Q. Did the TAA add any assets that

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<p>1 J. HUGHES 2 were -- to the sale that Barclays was taking? 3 MR. STERN: I am going to instruct the 4 witness not to answer this, because again, 5 you're calling for an interpretation of the 6 TAA. Your 30(b)(6) topic calls for 7 information concerning the negotiation and 8 drafting of the TAA. I don't believe it 9 calls for interpretation of the TAA. 10 So I'll instruct you not to answer. 11 If you want to ask him questions about 12 the course of the negotiation and drafting 13 of that document, that's fine. 14 Q. In entering into the TAA, did Barclays 15 intend to obtain any assets that it was not 16 already obtaining under the APA? 17 A. I think in discussing through its 18 representatives the terms of the APA, Barclays' 19 intention was to insure that there was nothing 20 in that agreement inconsistent with the 21 acquisition of the business that it had already 22 agreed to acquire. And I think that best 23 describes Barclays' intention at the time. 24 Q. So I guess I'm still trying to 25 understand, when entering into it, did Barclays</p>	<p>1 J. HUGHES 2 intend that there were any assets that it would 3 get at the OCC that Lehman had at the OCC that 4 Barclays was not already acquiring under the 5 APA? 6 MR. STERN: I think again this calls 7 for an interpretation of both the APA and 8 the TAA. So I am going instruct the witness 9 not to answer. 10 If you ask him questions about 11 communications and negotiations concerning 12 the TAA, that I think is consistent with 13 your 30(b)(6) topic number 20. 14 Q. And I take it you're following your 15 counsel's advice? 16 A. Yes. 17 Q. Is Barclays aware of any disclosure 18 that Barclays made to the creditors committee 19 concerning the amount of margin that was being 20 transferred to Barclays as a result of the sale? 21 A. I'm not aware of actual disclosures by 22 Barclays to the creditors committee to that 23 effect. It is possible, though I don't know 24 with any certainty, that representatives of the 25 creditors committee were involved in or part of,</p>
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<p>1 J. HUGHES 2 participated in or were present at discussions 3 during the closing weekend relating to margin or 4 collateral held in connection with the 5 derivatives business. 6 But I am not aware of any specific 7 communication, as I said, of the type you 8 described. Nor indeed have I asked that 9 question in preparing for today. 10 Q. Are you aware of any such disclosure 11 to the trustee? 12 A. When you say such disclosure, will you 13 do me the favor of repeating how you define 14 disclosure? 15 Q. Any disclosure by Barclays of the 16 amount of margin that was being conveyed to 17 Barclays under the sale? 18 A. And to what time period are you 19 referring? 20 Q. This is anytime prior to the closing. 21 A. It's possible that there were 22 communications referring to valuations, but I'm 23 not aware that Barclays made any representation 24 to anybody about how much margin there may have 25 been or in what form it may have -- or what form</p>	<p>1 J. HUGHES 2 it may have taken, because I don't think at that 3 point Barclays was able to establish precisely 4 either the total or the form. 5 I should also say, that given what I 6 have already said about what would be 7 surprising, indeed shocking, about the transfer 8 of the business that did not include all of the 9 margin in whatever form, that it wouldn't then I 10 think have appeared as a likely important part 11 of the discussion. 12 But it is possible that there were 13 estimations of related values that had been 14 provided by Lehman during the course of the 15 week. It's possible that there had been, you 16 know, discussion with respect to those values, 17 possible that the trustee was involved in or 18 had -- had sight of some of those estimations of 19 value. 20 But again, I think in common with all 21 other valuations, not only were they, as I have 22 said I think a number of times, extremely 23 uncertain, they were also, again as I have said 24 many times, provided by Lehman, and they weren't 25 Barclays' numbers and Barclays' estimations.</p>

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Q. I'll show you a document previously marked as Exhibit 19. So you will see on both the assets and the liability side the term "derivatives" appears.

A. Yes.

Q. In each case, the same number applies, which is 4 and a half billion dollars.

A. Yes.

Q. Did that number include, either column, any margin?

A. I don't know.

Q. Have you done anything to check whether that was the case?

A. No.

Q. If you wanted to determine whether this 4 and a half billion dollar number includes margin, who would you turn to?

A. I'm tempted to make a joke, but I won't.

I really don't know, because I don't know who -- I don't know who composed this document. I believe it is a document that was produced, put together and produced at some point by somebody at Lehman Brothers, but I

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specific question whether the 4 and a half billion dollars includes margin?

A. I have not asked that specific question.

I should perhaps add that the -- my belief is that this document refers to a stage in the transaction negotiation which became a stage in the transaction, and to a form of part of the transaction, which soon, soon hereafter changed.

Q. I'm going to ask you -- maybe it will be easier if I showed you.

MR. MAGUIRE: We will mark as Exhibit 561C document Bates stamped WGM Lehman E00013236 through 46.

(Exhibit 561C, document Bates stamped WGM Lehman E00013236 through 46 marked for identification, as of this date.)

Q. Are you familiar with this document, sir?

MR. STERN: I guess the first question is whether he has ever seen it before.

A. I'm not sure that I have seen this document before.

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don't know who in fact entered the -- either the words "derivatives" or the numbers 4.5.

Q. And you don't know whether anyone at Barclays has any such information?

A. I think there are people at Barclays who are familiar with this document and -- but I don't know, nor have I asked if we know -- if anybody at Barclays specifically knows its actual -- who the scrivener was of this document. It may be that it has been asked in the past, but I certainly don't recall it now.

Q. I'm not so much interested in the scrivener as much as the person who can tell us whether the 4 and a half billion dollar number includes margin.

A. It would have to be somebody at Lehman Brothers, I would think, to be sure. Because as I say, I believe it to be produced by somebody at Lehman Brothers. So I would have thought that would be the best place to ask.

Q. And you haven't checked with anybody at Barclays today who participated in the transaction either on the Barclays side or then as a legacy Lehman person, with respect to the

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Q. You see that it bears September 20, the Saturday date at the top. Do you see that, sir?

A. I see where it says "WGM final, September 20, 2008 a.m."

Q. And do you see that there is highlighted text in the middle of "Purchased Assets" on the first page which refers to purchased assets that have a book value of approximately 45.5 billion dollars? Do you see that?

A. I do see that language there, yes.

Q. And this refers to what had previously in the APA had a book value of approximately 70 billion dollars. Do you see that?

MR. STERN: Objection to the form.

A. The language says, "It being understood that the long positions referred to in Clause D of purchased assets do not have a book value of approximately 70 billion, but rather have a book value of approximately 45.5 billion."

Am I referring to the right piece?

Q. Yes, we are together, looking at the

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<p>1 J. HUGHES 2 same thing. 3 MR. STERN: I think if you are going 4 to ask Mr. Hughes about this paragraph, I 5 think you should have a chance to read the 6 entire paragraph. I don't know if you have 7 done that yet. 8 A. I haven't yet because I don't know if 9 I need to. 10 Q. I don't think you need to. Do 11 whatever you want to do. Let me give you the 12 question, and you can decide whether you -- 13 MR. STERN: Fair enough. 14 Q. Did Barclays understand by Saturday, 15 September 20, that the Lehman book value of the 16 repo assets was approximately 45.5 billion 17 dollars? 18 MR. STERN: If you know that fact, you 19 can answer. 20 I will object to the form because I 21 think the question is a little bit 22 confusing. 23 A. Could you repeat the question. 24 Q. Sure. 25 Did Barclays understand by Saturday,</p>	<p>1 J. HUGHES 2 September 20, that the Lehman book value of the 3 repo assets was approximately 45.5 billion 4 dollars? 5 MR. STERN: Objection to the form. 6 A. Can I just be clear about which assets 7 you are referring to. 8 Q. Let me try it differently then. You 9 understood that under the APA there was 10 70 billion dollars of assets that it was agreed 11 would be transferred to Barclays? 12 MR. STERN: Objection to the form. 13 A. I -- that's incorrect. By -- 14 certainly by September, the 20th -- 15 Q. No, no. I'm just talking -- 16 A. -- that was not part of -- that was 17 not the understanding. 18 Q. Right, right. I am simply talking 19 about the original terms of the APA as it was 20 originally executed, it called for the transfer 21 of assets that had -- this is the long 22 positions -- that had a value of approximately 23 70 billion dollars? 24 MR. STERN: Objection to the form. 25 A. I think I've answered that question</p>
Page 136	Page 137
<p>1 J. HUGHES 2 earlier by saying that there was an estimation 3 earlier in the week that the long positions as 4 you have described them were valued at 5 approximately 70 billion dollars. 6 Q. Right, right. And did Barclays 7 understand that as events had transpired and the 8 deal had changed, by Saturday, the book value of 9 the long positions that were being transferred 10 on Lehman's books was not 70 billion but in fact 11 was going to be approximately 45.5 billion? 12 MR. STERN: Objection to the form. 13 A. No, Barclays did not understand that. 14 Q. What did Barclays understand the book 15 value, Lehman book value was of the assets that 16 were being transferred that had previously been 17 described as long positions? 18 A. I don't think Barclays had an 19 understanding at the time you mention of what 20 Lehman's book values were. I don't think we had 21 knowledge of what Lehman's book values were 22 attributed to those same assets. 23 Q. Did Barclays have an understanding -- 24 A. Can I just be clear. You're referring 25 to a particular categorized 70 billion dollars</p>	<p>1 J. HUGHES 2 of assets which had previously been described as 3 long positions. My answer is that on -- at the 4 time you're asking the question, that at that 5 time, Barclays, as far as I'm aware, had no 6 knowledge of the book values that Lehman 7 Brothers associated with that categorized set of 8 assets. 9 MR. STERN: In other words, as of 10 September 20. 11 A. As of September 20. 12 Q. And what about with respect to the 13 clearance box assets? Did Barclays have an 14 understanding as to what the Lehman book value 15 was of the clearance box assets? 16 MR. STERN: Objection. I think, you 17 know, the use of the phrase "book value" 18 here is ambiguous. 19 But if you can answer, go ahead. 20 A. I'm not aware that Lehman Brothers 21 ever referred to values of clearance box 22 securities in terms of book value. I believe 23 that that category of assets which became known 24 as the clearance box assets was first 25 identified -- it was identified by Lehman</p>

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Brothers as being worth in their view approximately, I think 1.9 billion dollars. I think that was the first -- roughly that number was the first estimation.

But there was no use of the term "book value" at that point in time. Nor am I actually aware of any reference to clearance box assets by the use of the term "book value."

Q. Have you asked, in preparation for this or otherwise, any of the Barclays representatives who were at the sale hearing whether they understood the 47.4 billion dollar number that Ms. Fife represented to the court to include 1.9 billion dollars in book assets -- I am sorry -- in clearance box assets, in the 45 and a half billion dollars of other assets?

MR. STERN: Objection, this has been asked and answered multiple times.

You can answer again.

A. Without repeating our prior relevant answers to your questions, but if I may be lawyerly for a second, incorporating them into this answer, I don't know how Lori Fife came to that number. I don't know whether it did or did

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negotiations surrounding the clarification letter, and I am aware that there were several drafts of what ultimately was agreed to as the final clarification letter.

I'm also aware that, from my participation in the transaction and the events in question, that there was, at the time these revisions were being made and the negotiations were ongoing, a number of efforts by or -- yes, by the lawyers representing Barclays and the lawyers representing Lehman to, unsurprisingly I guess, put on paper what the negotiations had delivered in terms of an agreement at any point in time.

I think it is worth just noting that, as you may have heard from others, this was a particularly frantic period. There were enormous numbers of lawyers present, trying very hard to keep up with the flow of negotiation and the progression of negotiation, and it's clear to me from discussions I have had about the facts and circumstances associated with this effort to conclude the clarification letter.

But there were many points in time at which,

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not include, nor does anybody who was present for Barclays at the time, in my belief, know whether or not the clearance box assets were included in that number.

Q. Did you ask the people who attended specifically whether they considered the 47.4 to have been made up of the clearance box assets, plus an additional 45 and a billion dollars of assets?

MR. STERN: I am going to instruct you not to answer to your conversations with people, but you can testify to the facts that you learned. But I think you have already answered that, so I am just going to instruct you not to answer.

Q. Sir, I am going to show you a document we have previously marked as Exhibit 49. Have you reviewed this in preparation?

A. I don't know whether I have seen this document before or not, either in preparation for this deposition or otherwise. On the face of the cover, it is described as a revised clarification letter. I have discussed the topic of revised -- of revisions to and the

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unfortunately, lawyers for Lehman, lawyers for Barclays, and others in attendance may or may not have been fully knowledgeable about where the discussions had actually got to.

So I have gone through the topic as I mentioned of drafts of clarification letters, revisions to clarification letters, and I think it is important to recognize the conditions in which those revisions and negotiations took place.

Q. If you turn to page 2 of the document, you will see at the bottom of the page, there is a term D that talks about excluded assets, and that excludes cash. Do you see that?

A. I don't. I see paragraph D. Can I read it?

MR. STERN: What page are we on in terms of Bates numbers?

MR. MAGUIRE: The one ending in 65.

MR. STERN: I think we are on a different page than you are. You are looking at the redline?

A. Mine, page 2 of mine finishes at --

MR. STERN: I think it is easier if we

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refer to Bates numbers, and you should read as much of this as you need to answer the question.

Q. It is page BCI-CG 00024965.

A. OK, I have that page. Is this the same document as the one you -- that precedes it in the exhibit? Or is it not?

Q. I think the document that precedes it looks like the cover e-mail.

MR. STERN: Well, we have a clean version and we have a redline version. And I think what Mr. Hughes is asking is whether the clean corresponds to the redline. But you're not testifying. So I --

MR. MAGUIRE: I'm not the witness.

MR. STERN: Just so you know, Bill, we have a document here that has clean and then it has a redline. But you're pointing us to the redline.

MR. MAGUIRE: Exactly, yeah.

A. Can I read the paragraph?

Q. Sure.

A. OK, I've read it.

Q. I would like you to focus right after

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the quote, "Excluded Assets." You'll see where the excluded assets includes cash, and then there is a carve-out that excluded assets shall not include. Do you see that?

A. Yes.

Q. One of the things in the carve-out is margin guarantee fund deposit. Do you see that language?

A. Do you mean in the subclause which has a capital A?

Q. Yes.

A. So you mean, you are referring to the words "whether as margin, guarantee fund deposit or in any other form." Is that what you are referring to?

Q. Exactly.

A. I see the language there, yeah.

Q. Now, was it Barclays' intentions in inserting this language to add anything to the transaction, or was it Barclays' understanding that the margin and guarantee fund was already part of the transaction?

MR. STERN: I believe that calls for privileged information, and I'll instruct

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you not to answer.

You can ask about communications concerning this clause and if the witness is familiar with them.

Q. Who proposed this addition?

A. I have no idea.

Q. Have you done anything in preparation to determine who proposed this insertion?

A. As I said, I have spoken with representatives of Barclays, and both internal and external, to review the topic of drafts and revisions to the clarification letter. I have not asked the specific question that you just posed to me.

Q. If you'll turn to the previous page.

A. Can I just add that part of the reason for that is that I didn't think it -- I didn't think it was important.

Q. OK. Do you understand that the references to margin and guarantee fund deposit were deleted from the clarification letter?

MR. STERN: Objection to the form.

Actually I'm going to instruct you not to answer, because again here, we are getting

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into the area of contract interpretation.

If you want to show him a subsequent draft and how the subsequent draft changed and get his testimony on what he knows concerning how that occurred, that's fine.

Q. I take it you are going to follow your counsel's instruction?

A. I will.

Q. Sir, I'll --

A. But let me add the following. I'm not aware of any point during the negotiation of the clarification letter at which Barclays changed its views about -- or that it heard anything different from Lehman Brothers with respect to margin, guarantee funds or anything that one might describe as collateral or margin relating to the exchange-traded derivatives businesses.

So it is possible that there were drafts that referred to some of those issues, and you pointed at least to what appears to be one draft which does. Why it is there, I can't tell you.

Q. And in preparation I take it you have not gone through the specific drafts to see what

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happened and see how the clarification letter evolved?

A. I have been shown different drafts and I have had highlighted to me different language used in different drafts. I think that's -- that's about as much as I can say about what I have done with respect to the language in the drafts.

Q. And you also mentioned that you had discussions with people about the drafting process?

A. Yeah, that's with my external lawyers.

Q. And who were those?

A. Representatives of Boies Schiller, Cleary Gottlieb and Sullivan & Cromwell.

Q. What was the purpose of your discussions with those counsel?

MR. STERN: Well, part of the discussions were preparation for deposition, and other parts of the discussion were privileged communications. Well, they are all privileged, but part of the discussions related to getting information so that Mr. Hughes could testify.

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instruct you not to answer. I don't want to intrude on what was discussed between you and Cleary and Boies Schiller and Sullivan & Cromwell.

But if you want to ask what facts he knows concerning the course of those negotiations, that's fine.

Q. Sir, what communications occurred between -- what discussions occurred between Cleary and their counterparts after the reference to margin and guarantee funds deposit was deleted from the draft clarification letter?

MR. STERN: Objection to the form.

You can answer if you know.

A. I don't know the answer to the question. Nor do I actually fully understand the question, given that -- I don't know who specifically conducted negotiations of the type we are referring to or if indeed they actually occurred. So I can't help you with that.

Q. Can you tell us about any discussions that anyone at Cleary had with any of their opposite numbers concerning margin?

A. I do believe there were discussions,

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So if you want to ask him the facts that he learned concerning the chronology of the drafting process and if he remembers, or the people he spoke to remember, you can cover that.

Q. Who did you talk to about the drafting history?

A. Again, representatives of Boies Schiller, Cleary, and Sullivan & Cromwell.

Q. And who from Cleary?

A. People involved in that discussion included Vic Lewkow, Bob Davis, Lindsee Granfield, Ed Rosen. There is more. Boaz Morag, B-O-A-Z, M-O-R-A-G. I think. Mike Mazzuchi, and I can't spell Mazzuchi. Did I say Duane McLaughlin? Duane McLaughlin.

I think there may have been more, but I think that should cover it.

Q. It sounds pretty comprehensive.

Was the purpose of your discussing -- your discussions with them to at least in part determine what discussions they had had in the course of negotiating the clarification letter?

MR. STERN: I guess I am going to

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as I mentioned earlier, during the period 19th to 22nd involving representatives of Cleary, the trustee, the OCC, I believe representatives of Lehman and LBHI -- sorry, Lehman, and possibly the creditors committee were party to some of those discussions.

And if I may, I would refer you back to the earlier comments I made about the transfer and assumption agreement and the many communications among those people that I just identified relating to margin and associated issues.

MR. STERN: Bill, just so your Cleary list is complete, I may not have heard this, but I don't believe you listed Ed Rosen.

MR. MAGUIRE: I believe he did. But we have certainly got him now.

MR. STERN: So it's complete.

Q. You referred to discussions concerning the transfer and assumption agreement. Leaving aside any discussions about the transfer and assumption agreement, are you aware of any discussions that Cleary had concerning the subject of margin?

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<p>1 J. HUGHES 2 MR. STERN: Objection. 3 A. I'm hesitating because I'm not sure it 4 is a good representation of the discussions that 5 I have learned about, that if one leaves aside, 6 like you just said, discussions about the 7 transfer and assumption agreement, my belief is 8 that representatives of Barclays and their 9 opposite numbers, as you mentioned or described 10 them, had discussions about collateral related 11 to the exchange-traded derivatives business. 12 Those discussions were relevant to the transfer 13 and assumption agreement, but they were also 14 relevant necessarily to the actual sale of the 15 business of Lehman Brothers. So it is hard to 16 divorce the two. 17 On the one hand, I think the 18 discussions are primarily about margin and 19 establishing, again as I mentioned earlier, that 20 all of the margin in whatever form had to be 21 transferred to Barclays and had to be done 22 quickly, and the OCC urgently wanted an 23 agreement, wanted to conclude the agreement to 24 that effect. 25 And I think it is just somewhat</p>	<p>1 J. HUGHES 2 unrealistic to break up the discussion and then 3 apply it to a particular agreement at any 4 particular point in time, other than of course 5 to the actual final documentation of the terms. 6 Q. And what are the discussions that 7 Cleary had concerning margin, whether it was 8 with respect to the transfer and assumption 9 agreement or otherwise? 10 A. In effect, as I described earlier, 11 that the margin in whatever form, any property 12 that was held in connection with the 13 exchange-traded derivatives business, including 14 the OCC margin, however described, was 15 understood to be and should be transferred to 16 Barclays in the sale in accordance with what 17 was, I believe, not only the agreement of the 18 parties but the expectation of all of the 19 participants in the discussion that I had 20 earlier identified. 21 Q. And who at Cleary said that? 22 A. I don't know whether there is one 23 person. The principal negotiator of -- or the 24 principal participant in those discussions from 25 Barclays' perspective was Ed Rosen at Cleary</p>
Page 152	Page 153
<p>1 J. HUGHES 2 Gottlieb. 3 Q. And with whom did Ed Rosen have those 4 discussions? 5 A. Representatives of the OCC, the 6 trustee, representatives of Weil Gotshal, I 7 believe. I'm less certain about the 8 participation, though I believe they 9 participated. Representatives of the estate, 10 LBHI estate, and the creditors committee. I 11 believe that they participated in, or if not 12 participated, were made aware during the course 13 of that time, of the substance of the 14 discussions. 15 Precise names of people acting on 16 behalf of the trustee or the OCC, I couldn't now 17 recall. 18 Q. And what's the basis for your belief 19 that Weil was party to those discussions with 20 Cleary? 21 A. I'm not certain, but I believe that 22 those were the recollections of representatives 23 of Cleary who participated. I believe, though 24 again I wouldn't be certain, that the many 25 communications that I again referred to earlier,</p>	<p>1 J. HUGHES 2 a good proportion of which were by e-mail, may 3 also have included representatives of Weil. I 4 could be wrong about that, but that's my 5 recollection. 6 Q. When you say that's your recollection, 7 do you recall a specific e-mail that went to 8 Weil? 9 A. I don't recall a specific one here and 10 now. I was shown some e-mails that relate to 11 these discussions that we are focusing on right 12 now, and I thought that they included some 13 e-mails which were sent to people at Weil, but 14 again, I could be wrong. 15 Q. And leaving aside e-mails, do you know 16 one way or another whether Weil was party to the 17 conversations with Mr. Rosen concerning margin? 18 A. I believe so. I also believe that 19 Harvey Miller and possibly other representatives 20 of Weil understood each and every meaningful 21 portion of the agreement. But also, understood 22 at the time that all of the margin was included 23 in the assets that had to be transferred to 24 Barclays pursuant to the agreement. 25 Q. And what's the basis for that belief?</p>

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A. The --

MR. STERN: Let me just -- wait a second. I'm not sure -- I'm not sure what belief you're referring to in your question, because the answer referred to two different beliefs.

Q. Well, we will take them one at a time.

MR. STERN: One is a belief that Harvey Miller, et cetera --

Q. Why don't we start with that one.

With respect to Mr. Miller, what's the basis for your belief?

A. Can I ask one question of Mr. Stern before I answer that question?

Q. Go ahead.

MR. STERN: Let's step out.

MR. MAGUIRE: The witness is excused for a moment.

(Recess)

Q. Sir?

A. Thank you. The belief that you asked me about comes from discussions that I had in reports of -- by the people I had discussions with, mostly Cleary, relating to negotiations

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been present on a number of occasions many people from Cleary.

Q. What did the Cleary people tell you about their communications concerning margin with Harvey Miller?

WITNESS' ATTORNEY: @@Don't testify to what Cleary told you. You can testify what you learned, what facts you know concerning Cleary's communications with Harvey Miller on this subject.

Did I simplify it or complicate it?

THE WITNESS: You simplified it.

A. I don't know any facts that are borne of Ed Rosen telling me that he spoke to Harvey Miller specifically and spoke to Harvey Miller specifically about this topic. So I'm not seeking to attribute specific words from those discussions either to Harry Miller or Ed Rose.

Q. Let's leave those two individuals aside. What did Barclays -- what did Cleary communicate to Weil concerning margin?

A. I believe that included in the many communications that I have again referred to a few times were the expectation and belief and

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relating to margin during that week, closing weekend.

I have also, in preparation for today, reviewed some of the transcript of Harvey Miller's deposition from which I conclude that Mr. Miller was, among other things, knowledgeable about and fully understood all the meaningful terms of this transaction and I believe that he understood that the @@exchange-traded derivatives business and assets held in connection with it were transferred and should be transferred to Barclays.

Q. When you referred to the Cleary people, who were you referring to?

A. Certainly Ed Rosen, but also the recollections of the other Cleary individuals that I mentioned.

I hesitate around that only because it is hard for me to pinpoint exactly who may have said something specific at a particular point in time given that a lot of the discussions I have had recently with Cleary Gottlieb have included a variety of issues and, therefore, there has

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understanding that all of the collateral, any form of collateral held in connection with that exchange-traded derivatives business was to be acquired by Barclays.

It is hard in reviewing e-mails to recall exactly which was the first e-mail in a chain, but during the course of those communications and during the course of the discussions in the closing weekend, I believe it was clear, made clear by Cleary, among others, but certainly by Cleary to representatives of Weil that the collateral margin of whatever form was to be conveyed as I have described.

Q. I will leave aside e-mails now and just ask you about specific verbal conversation. Is that OK?

A. Sure.

Q. And can you point me to any specific conversations that occurred between Cleary and Weil concerning margin?

A. I think as I said before, there is clarity of recollection regarding the participation of the trustee or its -- or his representatives and the OCC.

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2 There is less clarity about the
3 actual participation of Weil in conversations
4 during that closing weekend. It is my belief
5 that they were party to such discussions, but as
6 I think I acknowledged earlier, I can't -- I
7 couldn't be certain about that. That being the
8 case, I don't think I can recall for you today
9 specific discussions between those parties that
10 definitively included Weil. I think they were,
11 as I said, again included in part or all of the
12 relevant e-mail chain of communications.
13 MR. MAGUIRE: We will mark as Exhibit
14 562C document Bates stamped WGM-Lehman-E
15 0006263 through 6270.
16 (Exhibit 562C, document Bates stamped
17 WGM-Lehman-E 0006263 through 6270 marked for
18 identification, as of this date.)
19 Q. Sir, I'm going to invite you please to
20 turn to the page, three pages in, Bates stamped
21 WGM-Lehman-E 00006265.
22 A. Yup.
23 Q. Are you with me?
24 A. Yup.
25 Q. If you would look, sir, at the bottom

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2 that's different from what I said, but if
3 you can recall.
4 A. I don't recall any discussions of the
5 type you just described.
6 Q. Sir, I will show you a document that
7 previously has been marked as Exhibit 50. While
8 we are getting that actually, let me just ask
9 you a couple more questions about Cleary
10 conversations.
11 Can you point me to any specific
12 discussions that anyone at Cleary had over the
13 weekend of the clarification letter with anyone
14 concerning guarantee fund?
15 A. What do you mean by guarantee fund?
16 Q. Using those words.
17 A. I wouldn't know with that degree of
18 particularity whether the discussions during
19 that weekend included that phrase. I wouldn't
20 know.
21 Q. Would you know whether there were any
22 discussions involving the term "clearing fund"?
23 A. I wouldn't know whether there was a
24 specific discussion that included that phrase.
25 I -- yeah, I think I can limit it at that

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2 of the page, few lines, starts with, "Maintained
3 by or on behalf of LBI," goes down to the
4 bottom, it is highlighted and deleted. Do you
5 see that?
6 WITNESS' ATTORNEY: This I have to say
7 is very hard to read.
8 A. I was about to say. Your use of the
9 term "highlighted" is perhaps not the best, but
10 I see what you are referring to.
11 Q. You can could read the text albeit
12 with a little struggle.
13 A. I can with a struggle.
14 Q. By all means take as much time as you
15 need to read it. My question is whether you can
16 point me to any discussions that Cleary had with
17 anyone concerning that deletion?
18 WITNESS' ATTORNEY: So the question is
19 whether Mr. Hughes recalls whether any of
20 the Cleary people recall a discussion about
21 that deletion?
22 Q. No, the question is whether Barclays
23 can point me to any discussions that Cleary had
24 with anyone concerning that deletion.
25 WITNESS' ATTORNEY: I don't know how

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2 because I'm not sure of the specific term or
3 not.
4 WITNESS' ATTORNEY: Let me state for
5 the record while Mr. Hughes is here as a
6 30(b)(6) witness, there should be no
7 implication from his lack of recollection
8 that such conversations did not occur. The
9 fact that Mr. Hughes may not recall does not
10 mean necessarily that such conversations did
11 not occur.
12 MR. MAGUIRE: Well, Barclays can
13 certainly reserve its rights in that regard,
14 Jack.
15 WITNESS' ATTORNEY: That's what I am
16 doing, I am reserving my rights. I don't
17 want there to be any implication as we sit
18 here today and Mr. Hughes tries in good
19 faith to answer your questions, that if he
20 doesn't recall something, that that
21 necessarily implies that the conversation
22 didn't occur. So I am reserving my rights
23 to make it clear on the record.
24 MR. MAGUIRE: Well, reserving your
25 rights --

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WITNESS' ATTORNEY: I am more than
reserving my rights, I am making it clear on
the record.

MR. MAGUIRE: Well, you understand
that certainly there is no agreement to that
effect on our side of the table. Everybody
can reserve their rights, that's fine.

WITNESS' ATTORNEY: Well, I don't
think it is a matter of agreement. I think
it is just a matter of basic common sense
that if a witness is trying in good faith --

MR. MAGUIRE: Sir --

WITNESS' ATTORNEY: Let me finish my
statement.

If a witness is trying in good faith
to answer questions and cannot recall, even
if the witness is a 30(b)(6) witness, that
that does not imply the complete absence of
those events. And we have had 30(b)(6)
witnesses for the moving parties who had no
recollection of certain facts. So I just
want to make that clear on the record.

MR. MAGUIRE: That's fine, you can
make your statement. We are not going to

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property that may be held to secure obligations
under such derivatives."

Do you see that?

A. I do.

Q. And who proposed that language?

A. I'm not sure I know who -- I don't
think I know who first proposed that language.
It's -- it could have come from a number of
sources.

Q. Do you know when that language was
proposed?

A. Apart from obviously at some point
during the course of that weekend, the closing,
I don't know exactly when it was first proposed
or by whom. It could have been proposed by the
OCC, could have been proposed by Weil. It could
have been proposed by a number of people.

Q. Can you tell me whether this was
originally featured in any red line draft or
markup of the clarification letter?

A. I don't know the answer to that
question.

Q. Can you point me to any discussions by
anyone representing Cleary concerning the

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argue and we will continue with the
deposition.

A. Can I make a comment?

Q. If you really want to.

A. I do. You asked me a question about
the use of specific terms is or specific
phrases, I should say, and I answered your
question literally in the sense that I have no
recollection of the use of those specific terms
or phrases.

But I offer that without the benefit
of what you mean by those terms.

Q. Sir, let me show you what we have
marked as Exhibit 25 which is the clarification
letter?

A. When you say the clarification letter,
do you mean the one that was ultimately agreed
between the parties and signed?

Q. I believe so, you're familiar with
that, right?

A. Yes.

Q. Sir, if you turn to the top of page 2,
you will see that four lines down from the top,
there is a parenthetical that says, "And any

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addition of this parenthetical?

A. When you say point you to discussions,
I'm not sure I understand.

Q. Can you tell me what discussions
Barclays or any of its representatives had about
the addition of this parenthetical to the
clarification letter?

A. I believe that the best recollections
of people at Cleary that I have spoken to are
that the language was included in the final
clarification letter partly as a reflection of
the discussions that had happened during the
course of the weekend, again, which I referred
to on several occasions, relating to assets held
in connection with the exchange-traded
derivatives business and I believe that it
appears here in the final letter, agreed letter,
following those discussions.

Whether it appeared or was proposed
prior to that, whether the language had been
discussed prior to that or by whom it may have
been initially proposed and when, I can't tell
you.

Q. Do you know whether anyone at Cleary

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2 had any discussion with anyone about adding this
3 parenthetical to the clarification letter?
4 A. I don't know specifically whether
5 there were discussions about adding the
6 parenthetical as as you describe.
7 I do know that it was Barclays'
8 understanding at the time that this document was
9 signed, was reviewed and signed, that there was
10 no part of what had been agreed in Barclays'
11 mind that was different from the APA or the
12 negotiated terms with Lehman Brothers regarding
13 exchange-traded derivatives.
14 I believe that Barclays intended for
15 this part of the agreement to accurately
16 describe the arrangements that had also been
17 discussed with the trustee and with the OCC.
18 WITNESS' ATTORNEY: Shall we take a
19 short break?
20 MR. MAGUIRE: Yes, that's fine.
21 (Recess)
22 Q. Before the break, we were talking
23 about a parenthetical on page 2 of the
24 clarification agreement. You are with me?
25 A. Yes.

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2 I specifically the numbers and values to be
3 associated with particular assets, be they cash
4 or securities. There may also be
5 representatives of Barclays in the operations
6 function that might know.
7 Q. Can you tell me what cash and
8 securities Barclays believes it remains entitled
9 to receive pursuant to the parenthetical we have
10 been talking about?
11 A. Again, the exact numbers, I can't give
12 you. I think there is, however, with that
13 proviso, some north of 900 million. I think it
14 is roughly 925 million, last time I saw, that's
15 due from I believe assets held at the OCC. I
16 think strictly they are held by JP Morgan, but
17 they relate to the OCC.
18 Q. Did -- sorry.
19 A. There may be additional margin or
20 collateral held at other futures exchanges or
21 other clearing houses. I don't think we have
22 been able to finally establish, despite many
23 attempts to do so with the trustee, what the
24 exact numbers are. So -- but I do believe that
25 the single largest portion is that 920-odd

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2 Q. What cash and securities has Barclays
3 received to date pursuant that parenthetical?
4 A. I'm not sure of the actual numbers to
5 date. I think there was -- I believe there is
6 an amount of slightly more than -- I think it is
7 a billion, but I'm not sure that it was cash or
8 Treasuries. I think it may have been
9 Treasuries, and a smaller amount of securities,
10 I believe in the -- either in the range of
11 20-odd million or 40-odd million. I can't
12 remember the precise number of securities other
13 than Treasuries.
14 Whether any specific cash in the form
15 of hard currencies had been received, I don't
16 know the answer to that. I think not yet. But
17 I'm not certain.
18 Q. Do you know whether Barclays has
19 received 1.375 billion dollars in cash at the
20 OCC?
21 A. I'm feeling like I should know the
22 answer to that question but I don't.
23 Q. Let me ask you, would Mr. Romain be
24 maybe the better person to ask that question?
25 A. Mr. Romain would know much better than

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2 million number that I just gave to you.
3 Q. And when you say other exchanges, does
4 that include foreign exchanges?
5 A. Absolutely. It includes any exchange
6 and includes any transaction or any position or
7 any collateral or any property associated with
8 it that was part of the Lehman Brothers
9 exchange-traded derivatives business.
10 Q. And does it also include the Chicago
11 Mercantile Exchange?
12 WITNESS' ATTORNEY: Objection to the
13 form of the question. "And does it also
14 include the Chicago Mercantile Exchange?"
15 All right, go ahead and answer if you can.
16 A. By that did you mean does it include
17 assets which are held by the CME?
18 Q. Yes.
19 A. I'm not sure whether strictly -- well,
20 first of all, whether strictly that would be the
21 right way to refer to it. I'm not sure whether
22 the relevant assets would be held by the CME as
23 the exchange or whether it would be the
24 clearing -- the relevant clearing corporation,
25 assuming you're not making any distinction

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<p>1 J. HUGHES 2 between the two. 3 I don't -- I'm not aware of assets 4 that are still outstanding and held there. I am 5 aware that prior to the 19th, the CME did close 6 out a substantial amount of positions that were 7 then held by Lehman Brothers. 8 So to the extent any assets were held 9 with respect to those positions, I wouldn't 10 expect that we would be awaiting those. But I 11 couldn't tell you definitively whether either 12 the CME or another particular exchange is not 13 holding assets that may come within the assets 14 to be transferred under the sale agreement. 15 Q. Did Barclays obtain any assets that 16 Lehman held at the CME? 17 WITNESS' ATTORNEY: Objection to the 18 form. 19 A. Not that I am aware of. 20 Q. Did Barclays undertake any credit 21 analysis prior to entering into the transfer and 22 assumption agreement? 23 A. What do you mean by credit analysis? 24 Q. The term is used in the transfer and 25 assumption agreement. We can show it to you if</p>	<p>1 J. HUGHES 2 that helps. 3 A. Yeah, please. 4 Q. I show you what has previously been 5 marked as Exhibit 51. And if you turn, sir, to 6 page 2, if you look at 2C, section 2C, and 7 within that to (i), "Barclays represents and 8 warrants that it has received such documents and 9 other information as it has deemed appropriate 10 to make its own credit analysis." 11 Do you see that? 12 A. Yup. 13 Q. What credit analysis did Barclays 14 perform? 15 A. I don't know, but I think the 16 representation or warranty is that not that -- 17 well, I'm not going to -- I'm not aware of one 18 way or another whether any credit analysis was 19 conducted prior to the signature of this 20 agreement. 21 Q. Can you tell me what documents and 22 other information -- 23 A. Could I interrupt you briefly. 24 Q. Of course. 25 A. I would like to ask one quick</p>
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<p>1 J. HUGHES 2 question. I don't need to go out. 3 MR. MAGUIRE: Fine. 4 (Discussion held off the record) 5 MR. MAGUIRE: The record will reflect 6 the witness is consulting with his counsel. 7 A. Thanks. 8 Q. Can you tell me, sir, first, do you 9 want to change any prior answer? 10 A. No, thanks. 11 Q. Can you tell me what documents and 12 information Barclays obtained prior to making 13 the decision to enter into the TAA? 14 A. Do you mean what documents Barclays 15 received with respect to the TAA? Or do you 16 mean any type of document before entering into 17 the TAA? 18 Q. I guess I'm looking for whatever 19 documents informed Barclays' decision to enter 20 into that agreement. Can you tell me what were 21 the universe of documents that Barclays 22 considered in making that decision? 23 A. I'm not sure I could describe 24 necessarily every document that may have been 25 relevant, but I would say that they included the</p>	<p>1 J. HUGHES 2 APA, they included all of the e-mail 3 communications relating to the TAA that I have 4 described. 5 It's possible that there was a prior 6 agreement or a draft of a prior agreement 7 between the OCC and the trustee and there may 8 have been -- and I believe there were additional 9 communications between the OCC and the trustee 10 that Barclays had sight of or was aware of that 11 also may have informed the decision. 12 That last category of additional 13 documents may not, in fact, have been 14 additional. It's possible they were included in 15 my early description of the e-mail chain among 16 Barclays, the OCC, the trustee, copy to Weil and 17 so forth. It's possible there were additional 18 ones. It's possible there were additional 19 discussions between Ed Rosen with respect to 20 this particular document, between Ed Rosen and 21 the OCC and the trustee. They may also have 22 been part of what I earlier described as the 23 communications during the course of a weekend. 24 So that if they weren't included in the earlier 25 description of the communication flow during the</p>

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2 course of that weekend, then I would include
3 them here.
4 Whether that's the entirety of the
5 documentation flow, I couldn't be certain. But
6 I would have thought it includes at least those
7 items that I referred to.
8 Q. Did Barclays, over the weekend with
9 the clarification letter, understand or have
10 information concerning the amount of collateral
11 that Lehman's customers had posted with Lehman
12 to secure their derivatives positions?
13 A. I've -- I don't think Barclays had any
14 information as to the specifics of customer
15 positions of the type you described. It's
16 possible that there had been some information
17 passed between respective representatives of
18 Lehman and Barclays who were connected with the
19 futures and options businesses. But I don't
20 think that they were a portion of the
21 negotiations that I referred to and I'm not
22 aware that there was ever any information
23 available regarding the customer positions and I
24 think probably there was not, but I could be
25 wrong about it.

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2 Q. Did Barclays have this information
3 prior to closing?
4 A. I have no idea. I have never seen the
5 document before and I haven't spoken to Gary
6 Romain about it either.
7 Q. Did Barclays know the total amount of
8 collateral that Lehman's customers had posted in
9 respect of their derivatives positions?
10 WITNESS' ATTORNEY: Where are we in
11 the 30(b)(6) topics here?
12 MR. MAGUIRE: I think we are still on
13 20.
14 WITNESS' ATTORNEY: We are on 20.
15 Q. Do you know, sir?
16 WITNESS' ATTORNEY: I don't think that
17 really is covered by 20, but I'll let you
18 answer it to the best of your ability.
19 A. I couldn't be certain, but I don't
20 think, I don't think so. But I couldn't be
21 certain.
22 Q. Have you done any investigation prior
23 to this deposition to determine whether or not
24 Barclays knew the amount of collateral that
25 Lehman held for customers of the derivatives

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2 Q. I'm not going to ask you any questions
3 about customer positions. I'm going to ask you
4 about the collateral that Lehman held for
5 customers to secure their positions. So
6 specifically I'm asking you about the money
7 market funds and the other collateral that
8 customers had posted with Lehman. Do you
9 understand what I am talking about?
10 A. Well -- no, I'm not sure I do
11 understand what you are talking about actually.
12 Q. Let me show you a document that has
13 previously been marked as Exhibit 404A. You
14 will see that this -- this contains some
15 handwriting from your colleague and Mr. Romain.
16 Basically, this says, lists the money market
17 funds and other assets and you will see there is
18 a little addition, Mr. Romain, on the left-hand
19 side, where he calculates the collateral and the
20 number he has here is 2.192 billion dollars.
21 A. It actually says 2,192 dollars.
22 Q. I'll represent to you that he has
23 testified that's thousands of millions, whatever
24 it is to get it to 2.192 billion.
25 A. OK.

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2 business?
3 WITNESS' ATTORNEY: I am going to
4 object. I don't think that's within the
5 scope of this deposition.
6 You can answer.
7 A. I have not spoken to anybody at
8 Barclays about customer collateral held by
9 Lehman Brothers in order to answer questions at
10 this deposition.
11 Q. Are you aware of any information that
12 Barclays had when it made the decision to enter
13 into the transfer and assumption agreement other
14 than what you have told us?
15 A. I am sorry, repeat that.
16 Q. We have been talking about information
17 that Barclays had prior to making the decision
18 to enter into the transfer and assumption
19 agreement. And you have listed a number of
20 documents. Are you aware of any other documents
21 or other information that you haven't told us?
22 A. I'm not aware of other documents, but
23 I think there is other information that I've
24 alluded -- that I have referred to earlier in
25 our discussions, meaning earlier in the

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deposition. And I'd summarize that as information that people at Barclays had relating to the conduct of futures and options business. And by options, I mean the exchange-traded options business and the detailed knowledge that Barclays had about the conduct of such business, inclusive of the manner in which collateral is held to support that business and including the different forms of collateral that are used in that business.

All of that and indeed additional information with respect to those businesses and how that they are conducted, which would be way too detailed to go into now, although I can if you wish, all of that knowledge clearly informed Barclays' assessments about whether it was a good thing, A, to acquire the exchange-traded businesses that we have described, inclusive of assets and liabilities, and also whether it was appropriate to reach the agreements that we did reach with the OCC and the trustee.

So that description doesn't refer to documentation, but I think it is important knowledge that Barclays had. I believe also

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Lehman had it, or representatives of Lehman had it, at the time too. So I think that is all important to understand in assessing the judgments that Barclays has made at the time.

Q. When you say the information that Barclays had concerning the businesses and how they were conducted, are you including in that the OCC's requirement that all derivatives positions be covered by collateral?

A. Yes. And I should just say that I'm not referring to Lehman's businesses in that description. I'm referring to the futures and options industry so to speak, and the manner in which exchange-traded businesses is conducted inclusive of the use of clearing houses and the OCC.

Q. I understand. And specifically with respect to the OCC, did you understand, Barclays understood that it marked to market positions on at least a daily basis?

A. It would have been the understanding that the OCC and other clearing corporations would mark margin and would value margin and related positions throughout the business day.

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Q. And where a position, where a member fails to post the required margin, the OCC liquidates the position?

A. Sometimes, yes, it has the right to do that.

Q. Who made the decision to enter into the transfer and assumption agreement?

A. I think ultimately Gerard Larocca was the signatory of it.

Q. Was he the decision maker?

A. I think the decision was made in a combination or through a combination of myself, Gerard Larocca and Rich Ricci.

Q. And who was the ultimate decision maker?

A. The ultimate decision maker? I'm not sure I -- I'm not sure what you mean by the ultimate decision maker.

I think that tracing the delegation and -- of authorities from a corporate perspective factually, I believe I may have been specifically an authorized signatory. But I think ultimately Gerard Larocca was definitively an authorized signatory of the signing entity.

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So I believe he -- I believe that he -- that Gerard Larocca would be the answer to your question.

Ultimately because it was connected with the negotiation of the transactions, I guess ultimately was, by extension, approved by the Barclays board. Though nobody, as I recall, actually picked up the phone to a member of the board to say is it OK if I sign this document right now.

Q. When was the decision made to enter into the TAA?

A. I think it was in the early hours of Monday morning, but I could be wrong about that.

Q. Sir, let's switch gears. I would like to ask you some questions about the clearance box assets.

A. Sure.

Q. Those are assets specifically at DTC, Deposit Trust Corporation. Can I ask you first why Barclays did not enter into an agreement with the DTC similar to the agreement that it entered into with the OCC?

A. Well --

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WITNESS' ATTORNEY: Does this call for privileged information?

A. I was going to ask a question first.

Are you asking me about the clearance box assets or are you asking me the DTC?

Q. Specifically about the arrangements that Barclays entered into with the OCC compared with the arrangements that it entered into with the DTC.

I mean to put it -- all I'm trying to find out is, I understand that Barclays agreed to be responsible for the settlement obligations of Lehman with respect to the OCC. And that Barclays declined to take on that same obligation with respect to the DTC.

WITNESS' ATTORNEY: So I think this is where the confusion comes in. You have a topic here, "Barclays decision not to the assume LBI's liabilities at DTC," et cetera, and you ask for discussions with LBI, et cetera. We think those would be the appropriate questions to ask. So -- I don't know if there is a pending question, but -- is there a pending question? I don't know

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if there is, is there a pending question.

Q. Let me put it, why did Barclays not agree to be responsible for the Lehman settlement obligations to DTC?

WITNESS' ATTORNEY: You can answer, but don't reveal any privileged communications, if you can answer it without revealing privileged communications.

A. I think that the determinations with respect to OCC obligations on the one hand and the determination with respect to DTC settlement obligations on another were never associated at any point in time.

The determination with respect to DTC obligations at the time was that Barclays had never contemplated taking on that category of liabilities of Lehman Brothers. Lehman Brothers never asked Barclays, as far as I'm aware, to take on those liabilities. Barclays did have discussions with DTC about them. But at no point, as far as I'm aware, did Barclays indicate to DTC that it would take on those obligations.

Q. I understand that some transfers were

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made from the DTC clearance box to Barclays on September 18 and September 19 of 2008. Can you tell me what was the reason that those transfers occurred?

A. I'm not sure I know exactly what you're referring to there by clearance boxes or which assets you are referring to.

Q. I believe that you wrote to the trustee concerning certain transfers that had occurred on Friday, September 19 from DTC. Do you recall that?

A. On the 19th?

Q. That's the Friday of the sale hearing.

A. Earlier you mentioned the 18th and the 19th. You are referring just to the 19th.

Q. I am going to start with the 19th and see if we can get there. Do you know why those assets were transferred?

A. Can I be clear which assets you are referring to, either by reading the list you are referring to or perhaps by you describing what exactly you are referring to?

Q. Yeah, I believe in the letter you say Barclays identifies the following transfers of

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clearance box securities and the first one you mention is 1.035 billion dollars from DTCC on September 19.

A. Um-hm.

Q. Why was that transfer made?

A. I believe it was part of an exercise pursuant to which or "part of" is the wrong word.

I believe the securities were transferred by either Jim Hraska, who was then an employee of Lehman Brothers or one of his colleagues, I think Jim Hraska, who I believe at the time thought that he was transferring those securities as part of a repo transaction, but that he was mistaken about that.

There had been, at or about the same time if not before that transfer -- I believe it may have been before -- an agreement reached between representatives of Lehman Brothers and Barclays that identified the clearance box assets as being a category of assets transferrable under the -- pursuant to the sale.

So I think that's -- I believe that's how it happened.

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2 Q. And I take it that all of the assets
3 that were transferred to Barclays that came from
4 the clearance box, Barclays is claiming them
5 under the clarification letter as clearance box
6 assets and not as a part of the repo?
7 WITNESS' ATTORNEY: Objection to the
8 form.
9 A. Well, I think first and foremost, any
10 assets we claim not pursuant to the
11 clarification letter, we claim the assets
12 pursuant to the asset purchase agreement as
13 clarified by the clarification letter, strictly.
14 Do we believe -- did we believe then
15 and do we believe now that some of the assets
16 were identified as clearance box assets and some
17 were identified as repo assets? Yes. There
18 were attempts, good faith attempts between both
19 Barclays and Lehman to identify each of those
20 categories of assets. I believe the assets that
21 you referred to that I had earlier referred to
22 in my letter were transferred from what were
23 termed the clearance boxes.
24 And so the identified category of
25 clearance box assets represented by Lehman

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2 objection to the form.
3 A. Other than under the sale agreement?
4 WITNESS' ATTORNEY: You can answer if
5 you understand the question.
6 A. If by your question you mean was
7 Barclays entitled to receive those assets from
8 the clearance boxes pursuant to the terms --
9 pursuant to the asset purchase agreement, yes, I
10 believe Barclays was so entitled.
11 The parties had agreed on the Friday
12 morning that unencumbered assets that were
13 then -- that Lehman Brothers was at that point
14 able to identify and termed the clearance box
15 assets were clearly assets owned in the business
16 and therefore, they were due to Barclays.
17 Q. The basis for Barclays claim to those
18 assets is the APA?
19 A. The APA --
20 Q. As clarified?
21 A. As clarified, yes.
22 Q. We have been talking about the DTC
23 clearance box. Is it Barclays' understanding
24 that it is entitled to securities and other
25 assets from depositories and clearance boxes

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2 Brothers, I think on the Friday morning as
3 transferrable included the 1.035 billion.
4 Whether any of the -- I can't now recall exactly
5 which accounts the repo assets were transferred
6 from and whether they were, in fact, separate
7 accounts or whether some of the assets under the
8 repo may have also come from the clearance
9 boxes.
10 I can't recall now specifically
11 whether the actual accounts from which the
12 transfers took place were at all times exclusive
13 or different if one looks at one category of
14 assets as compared to the other.
15 Q. Yeah, my question is simply the
16 billion dollars of assets that were transferred
17 on the Friday the 19th. I just want to
18 understand, Barclays is claiming that it is
19 entitled to those assets under the sale
20 agreement.
21 A. Correct.
22 Q. Does Barclays have any other
23 entitlement to those assets other than under the
24 sale agreement?
25 WITNESS' ATTORNEY: Objection,

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2 other than those at DTC?
3 A. I think if there are other assets that
4 were used in connection with the businesses of
5 Lehman Brothers in North America, that were --
6 that are unencumbered, in the sense used to
7 describe the clearance boxes, whether they are
8 at DTC or anywhere else, they would be due to
9 Barclays.
10 Q. And that includes EuroClear?
11 A. If such assets fit the description
12 I've just given, yes.
13 Q. Do you know whether Barclays has, in
14 fact, obtained securities or other assets from
15 EuroClear?
16 A. I don't know the answer to that
17 question.
18 Q. Do you know whether Barclays has
19 obtained securities or other assets from
20 clearance boxes in other -- from other clearance
21 boxes other than EuroClear and DTC?
22 A. I'm not aware that that's happened,
23 no. I'm not saying it hasn't, but I'm not aware
24 that it has. And to be clear, I'm not aware
25 that it has with respect to EuroClear. It may

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2 have, but I don't know.
3 Q. What did you understand was Lehman's
4 exposure to DTC?
5 A. When you say exposure, what do you
6 mean?
7 Q. Risk of loss?
8 A. To DTC?
9 Q. Maybe I should -- maybe it is easier
10 the other way around. What was DTC's exposure
11 to Lehman?
12 A. I don't know.
13 Q. Did Barclays make any effort to
14 determine, quantify what was DTC's exposure to
15 Lehman?
16 A. No. I think it would be more accurate
17 to say that DT -- that Barclays urged DTC to
18 make a realistic determination of what that
19 exposure would be. There were initial requests
20 from DTC to Barclays to cover the -- cover
21 Lehman liabilities associated with transactions
22 that are cleared through DTC, and during those
23 discussions, Barclays urged -- well, first of
24 all, rejected those requests. Secondly,
25 encouraged DTC to make a proper assessment of

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2 believe that Barclays was very concerned that if
3 transactions that are clearable through -- that
4 were clearable through DTC were not able to
5 clear on -- when markets opened after the
6 closing, that that would be hugely problematic
7 for the -- for not just Lehman but also for
8 Barclays.
9 Q. Did --
10 A. And therefore, it was potentially --
11 it was potentially -- it would potentially stand
12 in the way of Barclays being able to conclude
13 the transaction.
14 Q. Did Barclays consider whether it could
15 conclude the transaction if DTC refused to act
16 for Lehman?
17 A. I don't know whether there was that
18 specific consideration. I do know that there
19 were discussions relating to the -- to the risks
20 associated with DTC blocking transactions that
21 needed to clear. That discussion was not just a
22 DTC discussion, but it also related to other
23 custodians and other organizations or
24 institutions that cleared Lehman-related
25 business. It was important for the flow of

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2 the nature and extent of those exposures and
3 instead of pleading or claiming a need for an
4 open-ended guarantee or indemnity, to use its
5 own records to be able to estimate more
6 realistically what that potential exposure could
7 be.
8 And ultimately DTC, I believe, did
9 conduct such an exercise. I wasn't party to
10 such an exercise, nor am I aware that anybody at
11 Barclays specifically was a party to the
12 exercise. But DTC did ultimately return to the
13 discussion and DTC and Barclays ultimately
14 agreed that Barclays would provide the sum of
15 250 million dollars as a -- I think it was 250
16 million dollars as a limited recourse indemnity,
17 so to speak, for potential losses that DTC might
18 face if -- or after the markets open for
19 business on the morning of the 22nd of
20 September.
21 Q. Did Barclays assess the impact on the
22 business it was acquiring if DTC were to issue a
23 cease to act notice with respect to Lehman?
24 A. I'm not sure that Barclays made an
25 assessment of the type as you describe it. I do

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2 those settlements to be allowed to happen in
3 order that securities transactions could
4 properly clear and assets and liabilities flow
5 accordingly.
6 Q. Was there any discussion among the
7 principals at Barclays as to whether it could
8 close the deal without DTC support?
9 A. When you say DTC support, I don't
10 think there was any discussion about DTC
11 support.
12 Q. But that I simply mean without DTC
13 continuing to act for Lehman?
14 WITNESS' ATTORNEY: You can answer if
15 you can answer without revealing privileged
16 communications.
17 A. I don't think -- I'm not aware of
18 discussions that would be -- discussions other
19 than privileged discussions on that topic.
20 Q. Did Barclays have any discussions with
21 any regulators concerning the need for DTC to
22 continue to act for Lehman?
23 A. I think there may have been
24 discussions between external legal advisors of
25 Barclays and certain regulators on that topic,

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but I don't know the content of those discussions.

Q. Who was involved in those discussions?

A. I can only answer that by saying that I am aware that Ed Rosen from Cleary Gottlieb had some discussions with some regulators and I believe that Roger Cohen and Jay Clayton at Sullivan & Cromwell had discussions with some regulators. Whether those discussions included reference to this topic, I don't know.

I should add there were other discussions with regulators involving other people, but again, I'm not aware that they involved this topic.

Can I be clear, I assume you do not include the DTC in the definition of a regulator.

Q. That's right. All I am looking for is what communications were made by Barclays to regulators concerning the need for the DTC to continue to act for Lehman. Are there any communications that you are aware of?

WITNESS' ATTORNEY: Other than what you already answered?

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Q. Just let me know, sir, when you have done that.

A. OK, I've read it.

Q. I want to invite your attention, sir, specifically with respect to the distinction that is being drawn here between certain accounts maintained at DTCC and the securities contained in those accounts. Do you see that?

A. I do.

Q. Can you tell me what is the basis for that distinction?

WITNESS' ATTORNEY: If you can answer that without revealing privileged information, you can answer. If you are concerned you would reveal privileged information, let me know.

A. I believe the basis is that the agreement between Lehman Brothers and Barclays referred to, in this context, particular securities that had been identified by Lehman Brothers initially in a -- it had been a large list or lengthy list of securities. And that was the agreement between the parties with respect to that identified class of securities

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A. I don't think I can say anything more than what I have already said on the topic. But I would repeat that DTC was not acting for Lehman Brothers.

Q. By acting for Lehman Brothers, I simply mean clearing, continue to clear Lehman trades?

A. Yes.

Q. You understood that --

A. That I understand, yeah.

Q. I show you a document previously marked Exhibit 156B.

WITNESS' ATTORNEY: This is a lending letter before --

Q. To make it easier to you, sir --

WITNESS' ATTORNEY: You are going to point --

Q. Just going to point to the second page, first full paragraph, "It should be quite clear in context, however"?

A. Yup.

WITNESS' ATTORNEY: Why don't you read that paragraph and read whatever else you think you need to to put it in context.

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which were assets held in connection with Lehman's businesses which I said, as I have said, was the core of the transaction.

I believe the basis also is that at no point did Barclays ever agree in this context with Lehman Brothers to acquire liabilities in any accounts of Lehman Brothers at DTC, and further, I think the basis is that this paragraph is in part at least a reference to the nature of the agreement between Barclays and DTC as distinct from the nature of the agreement between Barclays and Lehman Brothers.

Q. Was this distinction ever discussed with anyone at DTC?

A. Which distinction?

Q. The distinction between the accounts maintained at the DTC and the securities contained in those accounts?

A. At which point in time are you referring to?

Q. At any point in time.

A. At any point in time. I believe Barclays made it clear to DTC that it was not acquiring any liabilities of Lehman relating to

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DTC, that Barclays was not acquiring the Lehman accounts at DTC, and I believe made it clear that there were securities of Lehman Brothers that typically clear through DTC which were to be acquired by Barclays.

I believe all of those points were made clear prior to the closing and prior to the signing of the DTC agreement and I can't be certain about what I am about to say, but I believe that representatives of Barclays at Cleary have on more than one occasion reiterated some or all of those points to DTC.

Q. Who at Cleary had those discussions with DTC?

A. I don't know whether those discussions included more -- people in addition to Ed Rosen, but I do believe it did include Ed Rosen.

Q. When did Mr. Rosen have those discussions?

A. I'm not certain as to the exact timing. I do think there were -- I do recall that there were discussions during the closing weekend. Precisely when, I'm not absolutely sure, and I believe there were discussions that

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post-dated the closing and the signing of the DTC agreement. Though again, I'm less certain about the fact of those additional discussions and, therefore, necessarily the content of them.

Q. When did the post-closing discussions between Mr. Rosen and DTC occur?

A. I'm really not sure.

Q. Can you give me a month?

A. No.

Q. Can you give me a year?

A. I believe there may have been discussions in the fourth quarter of 2008 and I believe there may have been discussions in 2009. Again, I wouldn't be able to say with certainty, and while I have had discussions with Ed Rosen about a whole variety of different issues, I don't recall -- I certainly can't recall now whether we identified when those discussions might have occurred.

Q. With respect to the 2009 discussions, can you give me a quarter in 2009 that those discussions occurred?

A. Really wouldn't be sure at this point. It's possible there were discussions in each

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quarter, but I really, I really couldn't say.

Q. With whom at DTC did Mr. Rosen have these discussions?

A. I think one or more of Don Thompson -- sorry, Larry Thompson, I think, and one other individual who I believe is the chief executive of DTC whose name is eluding me. If anybody can help me with that, I would be able to tell you whether it is right or wrong.

Q. When you saw one or more --

A. I think he had discussions with Larry and also with chief executive of DTC, but I'm not absolutely sure about that.

Q. And specifically, can you tell me what was said in those discussions about the distinction between the accounts at DTC and the securities contained in those accounts?

A. Yeah, I can't tell you specifically. As I said earlier, the serial distinctions or the serial comments that I made in answer to your question earlier, I believe were covered or some of them may have been covered, but I couldn't say with any degree of certainty.

Q. Let me ask you with respect to the

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discussions prior to the closing. Did anyone other than Mr. Rosen have discussions concerning this distinction with the DTC?

A. As I have earlier defined this distinction, yes.

Q. Who other than Mr. Rosen?

A. There were discussions involving, at one point, I believe Larry Thompson, if I am getting his name correct. But I have a greater recollection of representatives of DTC, I think in the form of their lawyers, who I believe were Proskauer at the time. I can't remember the specific names of individuals, but I do recall specific discussions between representatives of Barclays and such representatives prior to the signing of the DTC letter and prior -- and therefore, by definition, prior to the closing.

Q. And you have mentioned Mr. Thompson and Proskauer. Anyone else?

A. On the other side? I wouldn't be able to say. My sense was there were other people on the phone, but they were telephone conversations, so I couldn't say with certainty who else was present on the other side of the

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<p>1 J. HUGHES 2 phone. 3 Q. Other than -- did you participate in 4 these conversations? 5 A. I did. Well, I participated in some 6 or part of those conversations. But not 7 necessarily -- I didn't participate in all of 8 them. 9 Q. And other than you and Mr. Rosen who 10 on the Barclays side, who else participated in 11 these discussions? 12 A. The only other person I can recall 13 specifically being there when I was there was 14 Alan Kaplan who is, as I have said, a member of 15 my department. 16 Q. When did these conversations happen, 17 the preclosing discussions? 18 A. Again, it is hard to say with 19 certainty given how much was happening at that 20 time, how frenetic the whole thing was and how 21 little sleep everybody had had. 22 My best recollection of the discussion 23 that I was involved with or the discussions that 24 I was involved with, they were probably on the 25 Thursday night, but it's possible they were on</p>	<p>1 J. HUGHES 2 Friday night. I don't think they were after the 3 Friday night. 4 And the reason I say that is that I 5 recall the discussions taking place at whatever 6 time in Alan Kaplan's office at 200 Park Avenue 7 and the reason that that's relevant is that as 8 of Saturday morning, I was constantly at the 9 offices of Weil Gotshal right up until and 10 through the closing. Exactly what time I 11 arrived at the offices of Weil Gotshal on 12 Saturday morning, I couldn't now remember, but I 13 am pretty certain that the discussions did not 14 take place after 6 or 7 o'clock in the morning 15 on Saturday of what I guess would be the 20th. 16 And again, I do have a recollection of 17 a quite lengthy discussion involving the DTC. 18 It also was a discussion relating to DTC's 19 concern with respect to its own potential loss 20 and included the points I made several moments 21 ago now with respect to our urging DTC to come 22 up with what we thought was a realistic 23 proposition around its potential loss because 24 the urging was done by me. 25 Q. What did DTC say about its concerns</p>
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<p>1 J. HUGHES 2 about its exposures to Lehman? 3 A. I don't recall particular words. It 4 was clear at the beginning of the discussion 5 that they contended a much broader potential -- 6 or much greater potential loss than I thought 7 was rational and I conveyed my thoughts about 8 their irrationality at the time and, as I have 9 said, urged them to come to what I thought was a 10 realistic view which again, as I have said, they 11 ultimately did. 12 Q. Can you tell me whether anyone from 13 Barclays or representing Barclays had any 14 discussions with anyone at DTC after the Friday 15 night? 16 A. Anyone at Barclays after the Friday 17 night? I don't know the answer to that 18 question. It's possible that -- it's possible 19 that Alan Kaplan had additional conversations 20 with DTC. It's possible that Gerard Larocca had 21 discussions with DTC. It's possible that other 22 members of the operations function at Barclays 23 had discussions with DTC. I couldn't tell you. 24 Q. You are not aware of any discussions 25 after the Friday night?</p>	<p>1 J. HUGHES 2 A. Well, I'm not aware of any discussions 3 on this particular topic. I think there is a 4 decent chance, although I wouldn't know with any 5 certainty, that there were other discussions 6 with DTC. 7 Q. I'm just asking if your from your 8 knowledge -- 9 A. I'm not aware of others. 10 Q. Who at the Cleary was responsible for 11 negotiating the clarification letter? 12 A. I think it was a combination of Cleary 13 lawyers that I have previously referred to. The 14 responsibility I would say was shared among Vic 15 Lewkow, Bob Davis, Ed Rosen, Duane McLaughlin, 16 Lindsee Granfield and others. There were a lot 17 of people. No specific individual was delegated 18 with the actual comprehensive responsibility. 19 Many of those lawyers were having 20 discussions throughout the period of the 17th 21 through the 22nd with many different people. 22 From time to time, naturally, they would have 23 communicated either with me or other member of 24 my department about aspects of that negotiation 25 about aspects of the discussions they had with</p>

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<p>1 J. HUGHES</p> <p>2 those many other people at Weil or representing</p> <p>3 the trustee or the creditors committee or indeed</p> <p>4 anybody else. So I think there were lots of</p> <p>5 people that were responsible for it.</p> <p>6 Q. You have that Exhibit 156B still in</p> <p>7 front of you?</p> <p>8 A. Yup.</p> <p>9 Q. If you would turn to the third page,</p> <p>10 page 3 of Ms. Granfield's letter. If you look</p> <p>11 at the top and you will see the second full</p> <p>12 sentence reads, "Nothing in this letter or in</p> <p>13 Exhibit B should be construed to suggest that a</p> <p>14 portion of the securities in the LBI clearance</p> <p>15 boxes at the time of closing equal to the</p> <p>16 quantity of long customer positions in such</p> <p>17 securities were not sold to Barclays pursuant to</p> <p>18 the asset purchase agreement as clarified by the</p> <p>19 clarification letter."</p> <p>20 Do you see that, sir?</p> <p>21 A. I do.</p> <p>22 Q. Now, Ms. Granfield here is referring</p> <p>23 to a portion of security. Do you see that?</p> <p>24 A. Can I read the whole sentence?</p> <p>25 Q. Absolutely.</p>	<p>1 J. HUGHES</p> <p>2 A. OK, I see it.</p> <p>3 Q. Do you understand that she is</p> <p>4 referring to a particular portion of securities</p> <p>5 there?</p> <p>6 A. She certainly uses the --</p> <p>7 Q. Maybe I will try it a different</p> <p>8 question. Do you understand what she is saying</p> <p>9 there?</p> <p>10 A. No.</p> <p>11 WITNESS' ATTORNEY: Would this be a</p> <p>12 good time to take a little break, just two</p> <p>13 minutes.</p> <p>14 MR. MAGUIRE: Sure, sure. That's OK,</p> <p>15 we can take a break.</p> <p>16 (Recess)</p> <p>17 (Exhibit 563C, letter dated May 13,</p> <p>18 2009 marked for identification, as of this</p> <p>19 date.)</p> <p>20 Q. Sir, I have shown you a document we</p> <p>21 have marked as Exhibit 563C. It is a letter</p> <p>22 dated May 13 at 2009 from you to Mr. Giddens, is</p> <p>23 that correct?</p> <p>24 A. Yes.</p> <p>25 Q. If you turn it, sir, to page 4 of your</p>
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<p>1 J. HUGHES</p> <p>2 letter and see the first full paragraph begins,</p> <p>3 "By Sunday night, September 21," and it</p> <p>4 continues.</p> <p>5 A. Yup.</p> <p>6 Q. Can you tell me, sir, what's the basis</p> <p>7 for that sentence?</p> <p>8 WITNESS' ATTORNEY: Why don't you</p> <p>9 review the sentence in context.</p> <p>10 Q. Take as much time as you need, sir.</p> <p>11 A. I believe the basis for the statement</p> <p>12 is that by that point in time, it had become</p> <p>13 clear from DTC that the 250 million dollar</p> <p>14 limited recourse guarantee that's also referred</p> <p>15 to in this paragraph would be sufficient to</p> <p>16 cover DTC's exposure.</p> <p>17 As I said earlier, there had been a</p> <p>18 discussion with DTC on the topic and I assume</p> <p>19 that in this -- in the beginning of this</p> <p>20 paragraph, I'm making a reference to the final</p> <p>21 agreement from which it was fair to conclude</p> <p>22 that DTC had concluded that its exposure was, in</p> <p>23 fact, less than it originally feared and that</p> <p>24 was my understanding at the time.</p> <p>25 Q. And that DTC did not need any</p>	<p>1 J. HUGHES</p> <p>2 protection beyond the 250 million dollars that</p> <p>3 Barclays had agreed to deposit?</p> <p>4 A. Whether, in fact, they needed to or</p> <p>5 not, I believe that that was what we had agreed</p> <p>6 by that point in time.</p> <p>7 Q. Any other basis for that sentence by</p> <p>8 Sunday night?</p> <p>9 A. I think the tenor of the discussion</p> <p>10 that I had, that I had -- that I have earlier</p> <p>11 referred to suggested to me that DTC would</p> <p>12 reassess its concerns associated with that --</p> <p>13 with those exposures. I didn't know at the</p> <p>14 conclusion of that discussion that they would,</p> <p>15 in fact, agree that they really didn't need the</p> <p>16 kind of indemnity that they had first proposed</p> <p>17 and that they needed something considerably</p> <p>18 less.</p> <p>19 But because I felt at the time that it</p> <p>20 was an objectively sustainable notion, I</p> <p>21 certainly hoped that they would, as I then</p> <p>22 viewed it, see reason. The point being that DTC</p> <p>23 was in possession of all the necessary</p> <p>24 information to understand the long and short</p> <p>25 positions that were relevant to LBI in the DTC</p>

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<p>1 J. HUGHES 2 system and ought to have been able, therefore, 3 to determine not exactly by any means, but with 4 a reasonable degree of accuracy what that net 5 exposure might actually look like. 6 Q. Let me ask you about the -- 7 A. But I should just say, Barclays was 8 clearly not in such a position to make that 9 estimation. 10 Q. Let me ask you about the assets that 11 were in the DTC clearance box. What due 12 diligence did Barclays perform on those assets? 13 A. What do you mean by "due diligence"? 14 Q. What investigation did Barclays do 15 concerning those assets? 16 A. Can you be a bit more specific about 17 what you mean by investigation? 18 Q. Anybody go to DTC? 19 A. Not that I'm aware of. 20 Q. Did anybody get a schedule of those 21 assets? 22 A. I believe a schedule of assets was 23 provided or whether it was described as a 24 schedule or not initially, I don't think it was. 25 But a listing, as I mentioned earlier, of what</p>	<p>1 J. HUGHES 2 were represented as the clearance box assets was 3 provided on the morning of Friday the 19th by 4 Lehman Brothers to Barclays. 5 I believe that listing changed over 6 time, on more than one occasion, but that there 7 was an attempt to identify the actual 8 securities, CUSIP-by-CUSIP. I believe it was 9 ultimately referred to as schedule B, but I 10 could be wrong, I've often confused schedules, 11 A, B, Exhibits A and B and other such 12 appendages. 13 Q. Did Barclays send any of its 14 operations people to DTC's offices at any time 15 prior to the closing? 16 A. At any time prior to the closing, I 17 don't know the answer to that question. It's 18 possible that Gerard Larocca asked members of 19 the operations function to do that, but I don't 20 recall. 21 Q. Did Barclays ask any of its employees 22 to determine whether there were any liabilities 23 associated with any of the assets in the DTC 24 boxes? 25 WITNESS' ATTORNEY: Objection to the</p>
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<p>1 J. HUGHES 2 form. 3 Do you understand the question? 4 A. I'm not sure. Could you just repeat 5 the question. 6 Q. Let me try a different way. Did 7 anyone at Barclays use the term "cats and dogs" 8 with respect to the assets in the clearance box? 9 A. I don't know whether anybody used that 10 particular term, but I believe that when the 11 assets were first shown or -- to Barclays or 12 soon thereafter, Mike Keegan and/or Stephen King 13 on behalf of Barclays reviewed that listing of 14 assets and I believe concluded two things: One, 15 it was impossible in the time available to 16 assess whether or not those assets had the 17 values that the Lehman Brothers representatives 18 had ascribed to them, and, two, I believe Mike 19 Keegan felt that there was a good possibility 20 that there was a substantial difference between 21 the represented values and the likely actual 22 realizable values. 23 Q. Did anyone at Barclays use the term 24 "nails and hammers" with respect to the 25 clearance box assets?</p>	<p>1 J. HUGHES 2 A. Again, I've heard both that term and 3 the earlier term you used. But I don't recall 4 ever being present when such a description was 5 given. 6 If those two terms mean to you 7 anything of the type that I have just described, 8 then maybe they were said. I don't know. 9 Q. Was there a discussion among the 10 Barclays operations people in which it was 11 advised that Barclays should not take the assets 12 without the ability to cherry-pick and to leave 13 behind and not take certain assets in the DTC 14 clearance box? 15 A. I'm not aware of any such discussion 16 involving Barclays' operations people. 17 Q. Now, what about with -- involving Mike 18 Keegan or Stephen King? 19 A. I'm not aware of discussions involving 20 either Mike Keegan or Stephen King that relate 21 to cherry-picking of assets as you describe it. 22 Q. Was it Barclays' intention in taking 23 on the clearance boxes to -- 24 A. Can I just -- Barclays did not take on 25 the clearance boxes. Barclays agreed that it</p>

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2 would acquire a, as part of the purchase,
3 unencumbered securities which by definition, I
4 believe, and certainly Barclays understood to be
5 assets free and clear to be delivered. They
6 were defined or referred to as, at the time, as
7 unencumbered assets in Lehman's clearance boxes.
8 Q. Right. In the -- in entering into the
9 clarification letter, did Barclays intend to
10 retain the discretion and the right to be able
11 to return any clearance box assets to Lehman?
12 A. I don't believe there was a discussion
13 of the type you describe. I believe at the
14 time, Barclays had received a representation
15 from Lehman that this was one identified
16 category of assets that could be transferred.
17 And because they were unencumbered, naturally,
18 Barclays would have the right, all of the rights
19 with respect to an unencumbered asset that you
20 would expect them to have with respect to an
21 unencumbered asset.
22 Q. If you could turn to the clarification
23 letter that's Exhibit 25, I believe, before you.
24 And I would invite to you look at the very
25 bottom of the first page and all see a

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2 WITNESS' ATTORNEY: Can you answer
3 that without disclosing privileged
4 information or do you --
5 MR. MAGUIRE: I'm not looking for
6 legal advice. I want to know why Barclays
7 wanted the right to give assets back.
8 WITNESS' ATTORNEY: You can answer
9 that if you know why Barclays wanted the
10 right to give assets back.
11 A. I don't know the answer. I don't know
12 the answer.
13 Q. Did Barclays have a concern that
14 certain of these assets may be more in the
15 nature of liabilities or may have associated
16 liabilities which would make them more trouble
17 than they were worth?
18 A. I don't know whether at the time such
19 a determination was reached. I do know that
20 Barclays was concerned at the time, A, with
21 respect to the value of the securities in
22 question and, B, that it had no opportunity to
23 conduct any real analysis with respect to those
24 securities to make judgments of the type you
25 have questioned me about.

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2 parenthetical that begins "provided however."
3 A. Is this the actual signed
4 clarification letter again?
5 Q. Exhibit 25, yes.
6 A. I see the beginning of the
7 parenthetical.
8 Q. If you could read that full
9 parenthetical and anything else that you need to
10 in that sentence just so you understand the
11 context.
12 A. Yup.
13 Q. What was Barclays' intention in
14 retaining this right to give certain assets from
15 the box back to Lehman within 60 days?
16 WITNESS' ATTORNEY: You can answer
17 that provided you can do so without
18 revealing privileged information.
19 I guess to some extent, this is asking
20 for an interpretation of the agreement.
21 MR. MAGUIRE: No, I'm asking why
22 Barclays wanted this provision?
23 WITNESS' ATTORNEY: Why this was
24 inserted?
25 MR. MAGUIRE: Yes.

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2 So I do know there was concern about
3 identity of assets. There was concern about
4 value of those assets, all compounded by the
5 lack of time in which to conduct any real
6 inquiry.
7 I should add that the Lehman
8 representations did describe the assets as
9 unencumbered. But as I say, we had no ability
10 really to ascertain fully what it was that we
11 were going to be delivered.
12 Q. So you did not know at the time and
13 prior to closing whether any of the assets
14 within the DTC box, clearance box, were, in
15 fact, net liabilities?
16 WITNESS' ATTORNEY: Objection to the
17 form.
18 A. I don't know that. I think the right
19 people to ask that -- to ask that question of
20 would be Mike Keegan or Stephen King and I have
21 not spoken to either of the two of them
22 specifically to prepare for this deposition. I
23 have spoken to each of them over the course of
24 time, but not on this particular point.
25 But I would expect that if anybody at

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Barclays knows the answer to your question with respect to specific securities, it would be either one of those two. And possibly one or two other people on Stephen King's team as it then was. Jasen Yang I believe is someone you have also had an opportunity to speak with. It is conceivable that Jasen may have had some appreciation of the type that you're referring to.

Those are the guys we relied upon to identify the assets and to try at least to form any conclusions about them.

Q. Mr. Keegan and Mr. King, what were their respective roles?

A. When you say respective roles, you mean as employees of Barclays or with respect to the transaction?

Q. Specifically with respect to the transaction.

A. Well, I think they had a -- I think they had a number of roles associated with --

Q. Let me make it even narrower, let me just make it respect to the clearance boxes.

A. I would say they had roles, but

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certainly Barclays turned to both of Mike Keegan and Stephen King to consider the nature and value of a number of different assets, but included in those would be the nature and value of the assets that had been listed as included in the clearance boxes.

As I said, they had a very limited opportunity in which to do that, but those are the people whom Barclays relied to make such determinations or judgments about them as we could.

Q. Let me switch gears on you and ask you about the C3 asset. You remember that the clarification letter which is in front of you refers to a number of 769 million dollars in that regard.

A. I think it should.

WITNESS' ATTORNEY: I don't know if it is 8.

A. It is 8, right?

Yes.

Q. How was that number negotiated?

A. Overnight. Overnight on Thursday, the 18th of September, rolling into the morning of

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the 19th of September, Lehman Brothers conducted an exercise to try to identify particular assets and their values that could be conveyed as part of the sale transaction.

And one of the assets that on the morning of the 19th, there was described or represented by Lehman as being capable of being transferred was what they described as the excess in the 15c33 reserve account.

I believe that at that time, the Lehman Brothers representatives thought and indeed mentioned to Barclays that there was roughly, I think, one-half or 1.7 billion dollars of such an excess. And that that would be capable of being identified and transferred as part of the transaction.

Subsequently, during the course of the closing weekend, that number of 1.7 billion, roughly, was reduced to 769 million dollars of securities and that was ultimately the agreed identified value within this category that Lehman agreed to convey.

Partly, I believe, if not wholly, Barclays' understanding at the time, partly

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because of what I believe to have been a mistaken impression on the part of Harvey Miller at Weil Gotshal that there might need to be some regulatory approval to transfer those securities, it was agreed that Lehman Brothers would transfer those securities or other securities that were equivalent. In other words, either those securities actually identified or another 769 million dollars of securities.

Q. How was the number 769 chosen?

A. I believe it came from a combination of discussions and initially a reference to an e-mail which I believe was later seen by some, though by whom I'm not sure, and the discussions in the e-mail I believe referred to representatives of Lehman Brothers having had discussions with the SEC in which the SEC had agreed that a certain amount of that excess was available to be transferred and I think in that set of communications, I think including the e-mail, there was a specific reference to 769 million dollars of securities. At least I think that's where the 769 came from originally.

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<p>1 J. HUGHES</p> <p>2 Q. Did the 769 result from -- did that</p> <p>3 represent the total amount of noncash assets in</p> <p>4 the C3 account?</p> <p>5 A. I did not know what was in the C3</p> <p>6 account, I did not know nor do I know what was</p> <p>7 in the C3 account.</p> <p>8 I believe that 769 was represented as</p> <p>9 the total amount of securities in the excess in</p> <p>10 the C3 account.</p> <p>11 Q. Was there any discussion about any</p> <p>12 cash excess?</p> <p>13 A. I believe that there was cash included</p> <p>14 in the excess and I believe there was cash</p> <p>15 referred to in those communications and the</p> <p>16 e-mail that I had referred to. But I don't</p> <p>17 recall any discussion -- there certainly was not</p> <p>18 any discussion on the Friday morning when the</p> <p>19 topic first was raised about the constituent</p> <p>20 parts of the C3 account or the reserve.</p> <p>21 Q. Was there any discussion by anyone at</p> <p>22 Barclays about whether it could get cash from</p> <p>23 the C3 account?</p> <p>24 A. Whether it could get cash from the C3</p> <p>25 account. Again, I didn't think there was any</p>	<p>1 J. HUGHES</p> <p>2 discussion about anything relating to the C3</p> <p>3 account other than the excess in the C3 account.</p> <p>4 Q. Right, was there any discussion by</p> <p>5 Barclays about getting any cash excess from the</p> <p>6 C3 account?</p> <p>7 A. I don't know whether there was any</p> <p>8 discussions involving anybody from Barclays or</p> <p>9 its representatives relating to cash</p> <p>10 specifically. I believe there was a discussion</p> <p>11 on, at some point during Sunday afternoon, of</p> <p>12 the closing weekend in which, as I mentioned</p> <p>13 earlier, Harvey Miller, I believe, raised his</p> <p>14 mistaken belief that there was a need to have</p> <p>15 some kind of SEC approval.</p> <p>16 And it's possible that in that</p> <p>17 discussion, there was a reference -- there was</p> <p>18 reference to cash. I believe that at some</p> <p>19 point, Michael Klein was involved in that</p> <p>20 discussion, though I did speak with him about</p> <p>21 that and his recollection about it was not very</p> <p>22 strong or clear. So I couldn't say with</p> <p>23 certainty that there were any discussions</p> <p>24 involving Barclays or its representatives</p> <p>25 relating to cash in this context.</p>
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<p>1 J. HUGHES</p> <p>2 Q. Right. Now, you said Mr. Miller had a</p> <p>3 mistaken belief that regulatory approval was</p> <p>4 required for any part of the C3 asset to be</p> <p>5 conveyed to Barclays, is that correct?</p> <p>6 A. I think I did say that. Yes. That, I</p> <p>7 should say, is my belief, that his was a</p> <p>8 mistaken belief.</p> <p>9 Q. Have you discussed that issue with</p> <p>10 anyone at the SEC?</p> <p>11 A. No.</p> <p>12 Q. Is it your understanding that</p> <p>13 Barclays' entitlement to, anything from the C3</p> <p>14 account is subject or is not subject to SEC</p> <p>15 approval?</p> <p>16 A. It's my understanding that both now</p> <p>17 and at the time that any excess in the C3</p> <p>18 account was the property of Lehman Brothers,</p> <p>19 that that property was part of the Lehman</p> <p>20 Brothers North American business and it was</p> <p>21 therefore capable of being transferred as part</p> <p>22 of the purchase without SEC approval or indeed</p> <p>23 anybody else's approval.</p> <p>24 Because a question had been raised on</p> <p>25 the Sunday afternoon, albeit I believe that</p>	<p>1 J. HUGHES</p> <p>2 Barclays drew no conclusion at that point in</p> <p>3 time about that concern or question, that</p> <p>4 Barclays nevertheless felt it was appropriate at</p> <p>5 that point to cover that question by agreeing</p> <p>6 with Lehman Brothers that the delivery would be</p> <p>7 of the 769 within the excess or another 769</p> <p>8 million dollars worth of securities and I</p> <p>9 believe that that's -- that also would not have</p> <p>10 required any SEC or anybody else's approval.</p> <p>11 Q. So if I understand this, the sequence</p> <p>12 right, Mr. Miller expressed a belief that you</p> <p>13 think was mistaken and that's about getting the</p> <p>14 need to get SEC approval?</p> <p>15 A. That I believe -- I was not a party to</p> <p>16 that discussion. I believe -- that discussion</p> <p>17 was reported to me subsequently, I can't recall</p> <p>18 precisely when it was first reported to me. I</p> <p>19 now believe that to be a mistaken belief. But I</p> <p>20 think that was the provenance of the additional</p> <p>21 part of the agreement; that in any event, Lehman</p> <p>22 committed to delivering 769 million dollars of</p> <p>23 securities.</p> <p>24 Q. And so when did this discussion with</p> <p>25 Mr. Miller happen about -- that concerned his</p>

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1 J. HUGHES
2 belief that SEC approval was required?
3 A. I believe it was sometime on the
4 Sunday afternoon.
5 Q. With whom did that discussion -- who
6 were the participants pants in that discussion?
7 A. The person who recalls it best is Vic
8 Lewkow at Cleary Gottlieb. As I mentioned
9 earlier, he, Vic, recalled that Harvey Miller
10 was there, that at some -- for some portion of
11 the discussion, Michael Klein was there. I
12 don't recall whether anybody else was present, I
13 couldn't say.
14 Q. And while Barclays felt that belief
15 was mistaken, it nonetheless agreed that any
16 transfer of the excess would be subject to SEC
17 approval, is that correct?
18 A. I don't know whether at the time
19 either Vic Lewkow or Michael Klein knew whether
20 that belief was mistaken or not. But I do
21 believe that it was agreed at that point -- it's
22 possible it was agreed both before and after,
23 but that in any event, 769 million dollars of
24 securities would be transferred.
25 Q. And based on this belief of Mr. Miller

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2 it in front of you, section 8, this is part ii,
3 why did Barclays agree to the language "to the
4 extent permitted by applicable law"?
5 A. I don't think I have a nonprivileged
6 answer to that question.
7 Q. Did anyone ever -- did anyone ever
8 agree with Barclays that the transfer of this
9 769 million dollars would be unconditional?
10 WITNESS' ATTORNEY: Are you asking for
11 him to interpret the words in the
12 clarification letter?
13 Q. No. Did at any time over the
14 weekend --
15 WITNESS' ATTORNEY: Are you talking
16 about oral?
17 Q. Was there any discussion in which
18 anyone said to Barclays, 769 million, you will
19 get, unconditionally. Did that discussion ever
20 happen?
21 A. I believe that the understanding
22 between Lehman Brothers and Barclays was clear
23 that the excess in the C3 reserve account was
24 both available and could be transferred. I
25 believe that there was an agreement

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1 J. HUGHES
2 which Lehman decided to agree with --
3 A. Sorry to interrupt you, can I just
4 add, I think I mentioned -- and if I didn't, I
5 would like to mention that it had by that stage,
6 I believe, been mentioned that the SEC had
7 agreed that the excess could be transferred.
8 Now, I could be wrong about the actual
9 chronology of events there, it is hard to recall
10 precisely, but as I mentioned earlier, there
11 were communications and there was, I believe, an
12 e-mail referring to, among other things, the 769
13 and the apparent approval of the SEC.
14 Now, I don't know whether that came up
15 before the discussion on the Sunday afternoon or
16 after it, but I just mention it it is possible
17 it came up before as well, I don't know.
18 Q. If we leave a space in the transcript,
19 you can refer us to the e-mail that you are
20 referring to.
21 A. Yeah, I think I can.
22 WITNESS' ATTORNEY: Yes, we can do
23 that.
24 (Insert: _____)
25 Q. If you look at Exhibit 25, if you have

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1 J. HUGHES
2 unconditionally to transfer 769 million dollars
3 worth of securities. I believe that was
4 Barclays' understanding of the agreement between
5 Barclays and Lehman Brothers. I also believe it
6 was Lehman Brothers' understanding of the
7 agreement with Barclays.
8 Q. Did anyone at Lehman say that Barclays
9 would get 769 million pursuant to this term
10 unconditionally?
11 A. I'm not aware of the use of the word
12 "unconditionally." But I believe that Lehman
13 Brothers and Barclays both understood at the
14 time that 769 million dollars of securities
15 would be included in the assets to be
16 transferred to Barclays no later than a point
17 promptly after the closing of the transaction.
18 Q. Did anyone tell --
19 A. And I don't believe that Lehman
20 Brothers ever felt then or subsequently that
21 they had any right to withhold 769 million
22 dollars of securities.
23 Q. Did anyone from Lehman tell anyone at
24 Barclays that Barclays would get 769 million
25 dollars without SEC approval?

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1 J. HUGHES
2 WITNESS' ATTORNEY: Objection to the
3 form.
4 A. I am -- I am not aware of any such
5 expression, but I believe that such an
6 expression was unnecessary given the
7 representations previously made and the
8 agreement that was ultimately reached as it is
9 described in part in paragraph 8.
10 Q. You see towards the end of the
11 sentence we have been talking about, there is
12 the words, "are securities of substantially the
13 same nature and value." Do you see that?
14 A. I do see that.
15 Q. Who proposed that language?
16 A. I don't know.
17 Q. Why was it proposed?
18 WITNESS' ATTORNEY: Can you answer
19 that without disclosing privileged
20 communications?
21 A. I don't think I can answer that in any
22 nonprivileged way.
23 Q. What discussions were there between
24 Barclays and anyone else concerning those words?
25 A. Again, I don't think I can answer that

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1 J. HUGHES
2 WITNESS' ATTORNEY: No, no, no. We
3 are going to just talk for two seconds out
4 here.
5 MR. MAGUIRE: Very well. The record
6 will reflect the witness has again left the
7 room.
8 (Recess)
9 WITNESS' ATTORNEY: I think the
10 witness can answer this question because it
11 calls for communications between Barclays
12 and Lehman, I believe.
13 Q. Do you remember the question, sir?
14 A. I do. I do remember the question
15 though I am -- I cannot recall any conversations
16 of the type you referred to as hard as I might
17 try.
18 Q. And that includes whatever you have
19 learned in preparation for this deposition?
20 A. Yes.
21 (Pause)
22 Q. Sir, I show you what we will mark as
23 564C, your notice of deposition.
24 (Exhibit 564C, Notice of Deposition
25 marked for identification, as of this date.)

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1 J. HUGHES
2 question without implicating privileged
3 discussions.
4 Q. I'm not asking for internal Barclays
5 discussions. I am only asking for discussion
6 between Barclays and anyone representing
7 Barclays and Lehman or anyone else outside of
8 the Barclays family?
9 A. But you're asking me with respect to
10 this specific language.
11 Q. Yeah, what discussions did anyone at
12 Barclays or anyone representing Barclays have
13 with the trustee, with Weil, with the creditors
14 committee, anyone else concerning the words, "or
15 securities of substantially the same nature and
16 value"?
17 WITNESS' ATTORNEY: Let's discuss this
18 because you have a privilege concern.
19 MR. MAGUIRE: I think actually --
20 WITNESS' ATTORNEY: No, we are
21 entitled to confer on privileged concerns.
22 I'm not sure what his concern is. So let me
23 discuss it.
24 MR. MAGUIRE: Let me -- before you
25 take the break --

Page 233

1 J. HUGHES
2 Q. If you will turn, sir, to page 13, you
3 will see a topic number 23.
4 A. Page 13, topic --
5 Q. The very stop, I am sorry, topic 13,
6 whatever page it is on, 23. It is on page 7, I
7 am sorry, I misspoke.
8 A. Page 7. Topic --
9 Q. 23?
10 A. Topic 23.
11 Q. Can you tell me what did you do to
12 prepare yourself to address that topic?
13 A. I spoke with people internally at
14 Barclays and at Barclays and with external
15 lawyers who had acted on behalf of Barclays
16 about OCC margin and some of those discussions
17 were discussions had quite recently. But I also
18 carried with me coming into today the
19 recollections of some discussions that I have
20 had over the course of many months relating to
21 the OCC margin.
22 Q. Are you in a position as you sit here,
23 sir, to give me a complete list of all of the
24 documents that Barclays created or prepared
25 prior to September 22 of documents prepared or

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1 J. HUGHES
2 concerning or reflecting its proposed purchase
3 of the OCC margin?

4 WITNESS' ATTORNEY: I am going object
5 because the topic itself is ambiguous, but
6 you can try to answer it. In other words,
7 as you know, we objected to many of these
8 topics as being unclear and this is a
9 perfect example.

10 But go ahead.

11 Q. The reason I ask, sir, is I don't want
12 to waste your time here, if you have a specific
13 list that you can give me, that's helpful. If
14 it would be easier to get it from your counsel,
15 I'm perfectly happy to do it that way as well.

16 A. I don't have a list of the type you
17 describe. And I'm not aware of Barclays'
18 creation of, preparation of documents of the
19 type described in question 23.

20 Q. If you were to ask -- if you needed to
21 pull together a complete list of all the
22 documents that Barclays created or prepared that
23 in any way reflected its acquisition of the OCC
24 margin, who would be the person who would pull
25 that together for you?

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1 J. HUGHES
2 will talk about location and starting time.
3 But we will continue that.
4 Thanks, everybody.

5
6
7 JONATHAN HUGHES

8 Subscribed and sworn to
9 before me this day
10 of January, 2010.
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1 J. HUGHES
2 WITNESS' ATTORNEY: I am going to
3 object. It is an ambiguous request. It is
4 not at all clear what you are talking about.
5 You can try to answer.

6 A. I think my answer is the same as the
7 one I just gave you; namely, I'm not aware of
8 any documents that fit this description. There
9 may be some, I'm not aware of any.

10 MR. MAGUIRE: OK. I have no further
11 questions for you at this time, sir. Can we
12 go off the record.

13 (Discussion held off the record)

14 MR. STERN: Back on the record. We
15 have had a long day and I understand that
16 the debtors' counsel has questions that may
17 take hours and that creditors committee may
18 have questions.

19 So given the hour of the day, we have
20 agreed to continue this deposition. The
21 date we have agreed on is February 1 and we
22 (Continued on next page for jurat.)
23
24
25

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1 J. HUGHES
2 INDEX:
3 WITNESS EXAM BY: PAGE:
4 J. Hughes Mr. Maguire 6
5

6 EXHIBITS
7 Exhibit No. Marked
8 Exhibit 561C Document Bates stamped WGM 132
9 Lehman E00013236 through 46
10 Exhibit 562C Document Bates stamped 158
11 WGM-Lehman-E 0006263 through
12 6270
13 Exhibit 563C Letter dated May 13, 2009 207
14 Exhibit 564C Notice of Deposition 232
15
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1	J. HUGHES	1 J. HUGHES
2		2 ***ERRATA SHEET***
3		3 NAME OF CASE: In Re: Lehman Brothers
4	CERTIFICATE	4 DATE OF DEPOSITION: 1/15/10
5	STATE OF NEW YORK)	5 NAME OF WITNESS: Jonathan Hughes
6)ss:	6 Reason codes:
7	COUNTY OF NEW YORK)	7 1. To clarify the record.
8	I, MARY F. BOWMAN, a Registered	8 2. To conform to the facts.
9	Professional Reporter, Certified Realtime	9 3. To correct transcription errors.
10	Reporter, and Notary Public within and for	10 Page ____ Line ____ Reason ____
11	the State of New York, do hereby certify:	11 From ____ to ____
12	That JONATHAN HUGHES, the witness	12 Page ____ Line ____ Reason ____
13	whose deposition is hereinbefore set forth,	13 From ____ to ____
14	was duly sworn by me and that such	14 Page ____ Line ____ Reason ____
15	deposition is a true record of the testimony	15 From ____ to ____
16	given by such witness.	16 Page ____ Line ____ Reason ____
17	I further certify that I am not	17 From ____ to ____
18	related to any of the parties to this action	18 Page ____ Line ____ Reason ____
19	by blood or marriage and that I am in no way	19 From ____ to ____
20	interested in the outcome of this matter.	20 Page ____ Line ____ Reason ____
21	In witness whereof, I have hereunto	21 From ____ to ____
22	set my hand this 15th day of January, 2010.	22
23		23
24		24
25	MARY F. BOWMAN, RPR, CRR	25 JONATHAN HUGHES

BCI EXHIBIT

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al, (Jointly Administered)
Debtors.

-----x

DEPOSITION OF ELIZABETH JAMES

New York, New York

January 14, 2010

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 27055

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 5 January 14, 2010 6 10:15 a.m. 7 8 Deposition of ELIZABETH JAMES, held at 9 the offices of Hughes, Hubbard & Reed, LLP, One 10 Battery Park Plaza, New York, New York, before 11 Mary F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: KELLY CARRERO, ESQ. 9 10 BOIES, SCHILLER & FLEXNER, LLP 11 Attorneys for Barclays and The Witness 12 10 North Pearl Street 13 Albany, New York 12207 14 BY: TRICIA J. BLOOMER, ESQ. 15 16 17 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 18 Attorneys for the Creditors Committee 19 51 Madison Avenue - 22nd Floor 20 New York, New York 10010 21 BY: ROBERT K. DAKIS, ESQ. 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 4</p> <p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: NEIL OXFORD, ESQ. 9 SAM McCOUBREY, ESQ. 10 AMINA HASSAN, ESQ. (a.m. session) 11 WILLIAM MAGUIRE, ESQ. (a.m. session) 12 13 14 15 16 17 18 19 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 5</p> <p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 IT IS FURTHER STIPULATED AND AGREED 15 that the within deposition may be sworn to 16 and signed before any officer authorized to 17 administer an oath, with the same force and 18 effect as if signed and sworn to before the 19 Court. 20 21 22 23 24 25 TSG Reporting - Worldwide 877-702-9580</p>

Page 6	Page 7
<p>1 JAMES 2 (Exhibit 552, typewritten notes 3 consisting of four pages marked for 4 identification, as of this date.) 5 ELIZABETH JAMES, 6 called as a witness by the parties, 7 having been duly sworn, testified as follows: 8 EXAMINATION BY 9 MR. OXFORD: 10 Q. Good morning, Ms. James. We met off 11 the record. As you know, my name is Neil Oxford 12 with the law firm of Hughes, Hubbard and Reed, 13 and we represent James Giddens, the SIPA trustee 14 in this litigation. 15 Have you ever had your deposition 16 taken before? 17 A. No. 18 Q. Just some basic ground rules, and I am 19 going to ask you a series of questions. It has 20 happened before and may happen again that those 21 questions could be perceived as unclear, and if 22 they are unclear, I would ask you to clarify -- 23 ask me to clarify them. I will be happy to do 24 so. 25 But if you just answer my question, TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 I'll assume that you understand my question. Is 3 that fair? 4 A. That's fine. 5 Q. And this is not -- it may seem like it 6 at some point, but it is not intended to be a 7 marathon session, so if you need a break at any 8 time, just let me know. 9 Can you tell me, please, Ms. James, 10 what you did to prepare for this deposition? 11 A. I went and reread my e-mails, put my 12 notes together and had some conversations with 13 people from Barclays. 14 Q. When you say you reread your e-mails, 15 can you give me a little more detail on that? 16 A. I just picked up my e-mails and my 17 declaration, based on putting the declaration 18 together, just to confirm it was all fresh in my 19 head. 20 Q. And what notes did you look at to 21 prepare for this deposition? 22 A. My declaration and the other people's 23 declarations that I'm looking on behalf of -- 24 talking on behalf of, I should say. 25 Q. Separate and apart from those TSG Reporting - Worldwide 877-702-9580</p>
Page 8	Page 9
<p>1 JAMES 2 declarations, did you prepare any notes for this 3 deposition? 4 A. Yup, yup, which you have. 5 MR. OXFORD: Let the record reflect 6 the witness is indicating the notes for a 7 deposition, which I have marked as 552. 8 Q. You said in answer to my last question 9 that you were talking on behalf of some people. 10 Can you explain that a little further? 11 A. Because I am talking on behalf of 12 Barclays, yup, and I am not an OCC expert, which 13 I am not, I will admit, so what I did was 14 actually spoke to the people in Barclays that 15 look after the OCC option, just to make sure I 16 understood what they did and what their 17 declaration said. 18 Q. I understand. Who were those people 19 you talked to? 20 A. Dan Dziemian, and don't ask me to 21 spell his last name, and Craig Jones. 22 Q. Are those individuals both former 23 Lehman employees? 24 A. Yes, they are. 25 Q. Can you tell me what their positions TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 are just now? 3 A. Dan Dziemian is an operations person 4 for the OCC business, and Craig Jones works in 5 the Treasury world in Barclays, both operations. 6 Q. When did you speak to Mr. Dziemian? 7 A. Yesterday. 8 Q. Was that the first time you spoke with 9 Mr. Dziemian? 10 A. No. 11 Q. When did you first speak to 12 Mr. Dziemian in connection with this litigation? 13 A. Probably about a week ago. Yeah, 14 probably a week, if my memory serves correct. I 15 talk to Dan actually fairly often because of the 16 work we do together, but in regards to this is a 17 week. 18 Q. And how is it you came to speak to 19 Mr. Dziemian? 20 A. Due to his declaration, I wanted to 21 make sure I was happy with what he put in there, 22 and the questions that I am responding to talk 23 very specifically about OCC options. 24 Q. Did you review Mr. Dziemian's 25 declaration before it was finalized? TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 A. No.
3 Q. Can you tell me what you and
4 Mr. Dziemian discussed about a week ago?
5 A. What was -- you know, what was in his
6 declaration, what the numbers were, what
7 happened, how the process worked.
8 Q. Approximately how long did that
9 conversation last?
10 A. 15, 20 minutes.
11 Q. Did you take any notes of that
12 conversation?
13 A. No.
14 Q. Was anyone else on the call apart from
15 you and Mr. Dziemian?
16 A. No.
17 Q. OK. Mr. Jones, Craig Jones?
18 A. Yes.
19 Q. Can you tell me when you first spoke
20 with him in connection with this litigation?
21 A. That was actually yesterday when I had
22 both of them on the call, Dan and Craig.
23 Q. You spoke to Mr. Dziemian twice?
24 A. Yes.
25 Q. And I think we have covered your
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1 JAMES
2 A. Oh, for the deposition or my
3 declaration? Apologies.
4 Q. Deposition.
5 THE WITNESS: Thanks, Trish.
6 A. Yes. To the deposition, yes. The
7 declaration, no.
8 Q. All right. My previous series of
9 questions were about preparation for the
10 deposition.
11 A. Sorry.
12 Q. When you were answering them, were you
13 answering them understanding my questions to be
14 relating to the declaration?
15 A. Yes -- no, to the deposition. You're
16 fine. Apologies.
17 Q. OK. So you did or did not speak to
18 Mr. Romain --
19 A. Yes, I did.
20 Q. And you spoke to Mr. Romain in
21 connection with your preparation for your
22 deposition; is that correct?
23 A. It was more actually about his than it
24 was about mine, to be honest.
25 Q. When did you first speak to Romain in
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1 JAMES
2 recollection of the first conversation with
3 Mr. Dziemian about a week ago. Can you tell me
4 about your conversation with Mr. Jones and
5 Mr. Dziemian yesterday, please?
6 A. It was just purely to confirm that
7 there wasn't anything that I missed and
8 reconfirm that I understood what I was talking
9 to.
10 Q. Was anybody else on the telephone
11 call?
12 A. My legal counsel.
13 Q. Did you take any notes of that call?
14 A. Nope.
15 Q. Did you ever -- withdrawn.
16 Did you talk to Mr. Romain as part of
17 your preparation for your deposition?
18 A. No. I spoke to him after, but I
19 didn't speak to him prior.
20 Q. After or prior to what?
21 A. My declaration. Sorry.
22 MS. BLOOMER: Just to clarify the
23 record, I think he was asking whether you
24 spoke to Gary in preparation for this
25 deposition.
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1 JAMES
2 connection with this litigation?
3 A. This week.
4 Q. Can you tell me how that call came to
5 happen.
6 MS. BLOOMER: I am going to object.
7 To the extent it calls for discussions or
8 information that you received during your
9 discussions with your counsel, I am
10 instructing you not to answer. But
11 otherwise, you can answer.
12 A. Then I won't answer.
13 Q. Just Trish's objection is very fair.
14 In this question and in all of my questions, I'm
15 not seeking to discover information from you
16 that you only know from your counsel. So if the
17 answer is I only know that information because
18 of my counsel, then I don't want to know that
19 answer.
20 But if you know how, independent of
21 your conversation with Trish or any other
22 counsel, how it was that your conversation with
23 Mr. Romain was set up, you can answer that
24 question.
25 A. The call was set up by Gary with
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<p>1 JAMES 2 counsel. 3 Q. You said it was approximately one week 4 ago? 5 A. No, no, no. It was this week. 6 Q. Which day this week? 7 A. What's today? Today is Thursday? 8 Tuesday. 9 Q. Approximately how long did this call 10 take? 11 A. It was five or ten minutes. He just 12 wanted to clarify something. 13 Q. What did he want to clarify? 14 A. I think it was one of the numbers, to 15 be honest. I honestly don't remember. 16 Q. When you say one of the numbers, can 17 you be a little more specific? 18 A. Numbers that are in my declaration. 19 Q. You don't remember which number he 20 wanted to clarify? 21 A. No. Sorry. 22 Q. Was anybody else other than your 23 counsel on this call? 24 A. No. 25 Q. Do you have any notes of that call? TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 A. Nope. 3 Q. Have you spoken to anybody in 4 connection with this litigation who you know to 5 be an expert for Barclays? 6 A. No, because I'm not sure who the 7 experts are, to be honest. Sorry. 8 Q. That's a fair clarification. Have you 9 spoken to a gentleman by the name of 10 Mr. Leitner? 11 MS. BLOOMER: You probably want to 12 give the first name. That may help her. 13 A. Yeah. Sorry. 14 MS. BLOOMER: Tony Leitner. 15 Q. Anthony, Tony Leitner. 16 A. Actually, I think he might have 17 been -- yes, I think he may have been on a call 18 once, but I'm actually not 100 percent sure. I 19 think he may have been. 20 MS. BLOOMER: Just testify to the best 21 of your recollection. That's fine. 22 A. Sorry. 23 Q. Can you give me the best recollection 24 of the discussion that took place on the call 25 that you think Mr. Leitner may have been on? TSG Reporting - Worldwide 877-702-9580</p>
Page 16	Page 17
<p>1 JAMES 2 A. I think it was -- 3 MS. BLOOMER: I am going to object to 4 the extent it requires the disclosure of 5 communications with your counsel. Other 6 than underlying facts, obviously. 7 A. Yeah, I have never spoken to him 8 otherwise. 9 Q. Do you remember, other than 10 conversations with your counsel, that your 11 counsel participated in, was there any other 12 underlying factual discussion that you had on 13 this call that you believe Mr. Leitner 14 participated in? 15 A. No. 16 Q. When did this call take place? 17 A. I actually don't remember. A couple 18 of weeks ago. I can't be specific. Sorry. 19 Q. Have you ever met or spoken to a 20 gentleman called Pfeleiderer? 21 A. No. 22 Q. When did you first come to learn that 23 you would be giving a declaration in this case? 24 A. A declaration or deposition? Sorry. 25 Q. Declaration. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 A. The original declaration, I believe 3 was at the end of the summer. 4 Q. When you say the original declaration, 5 what do you mean? 6 A. When I was originally asked -- I was 7 originally told -- 8 MS. BLOOMER: I am going to object to 9 the form of the question to the extent it 10 requires disclosure of discussions with 11 counsel. 12 Q. You mentioned in the answer to my last 13 question, Ms. James, an original declaration. 14 Can you explain without revealing the content of 15 discussions with counsel what that original 16 declaration was? 17 MS. BLOOMER: I am going to object. 18 We are really bordering on work product 19 here, so I just want to make sure that the 20 record is clear that we are objecting and 21 that she shouldn't be discussing the work 22 that she was doing at the direction of 23 counsel or the communication she was having 24 with counsel. 25 MR. OXFORD: That's fine. I think TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 that's carved out in my question.
3 So can you read my question back,
4 please.
5 (Record read)
6 A. It is the same as my current
7 declaration.
8 Q. Word for word it is the same as your
9 current declaration?
10 A. I can't guarantee that without going
11 back and --
12 MS. BLOOMER: Objection.
13 Q. In sum and substance, is it the same
14 as the declaration that you have in front of
15 you?
16 A. Yes.
17 Q. And that was originally prepared
18 approximately what time frame?
19 MS. BLOOMER: I am going to object
20 again. There was a process by which her
21 declaration was completed, and the process
22 is beyond the scope of what's fair game
23 under the privilege rules.
24 MR. OXFORD: I think the time is fair.
25 MS. BLOOMER: Sure.
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1 JAMES
2 over their customer business. But there was no
3 due diligence that was followed.
4 Q. When you say "we," I presume "we"
5 refers to Barclays?
6 A. Yes.
7 Q. In discussions to take over Lehman's
8 customer business; is that correct?
9 A. Yes.
10 Q. Can you tell me everything you know
11 about those discussions, please.
12 MS. BLOOMER: Objection, form.
13 Q. You can answer.
14 A. We were approached -- I suppose that's
15 the best way, we were approached by the CME as
16 if we would have discussions with Lehman to
17 acquire -- to take over. We didn't buy it. We
18 weren't buying it, but to take over their
19 customer business so that their customers could
20 continue trading, and we agreed to do that.
21 Q. The CME is a reference to the Chicago
22 Mercantile Exchange?
23 A. Correct.
24 Q. And how is it you know that Barclays
25 was approached by CME to take over Lehman's
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1 JAMES
2 A. Time as in -- sorry.
3 Q. When did you prepare this original
4 declaration?
5 A. I would have to go back and check. I
6 honestly don't remember. It was the end of the
7 summer. That's as much as I can tell you.
8 Q. That's fair. Thanks.
9 A. I think.
10 Q. Ms. James, did you have any role in
11 performing due diligence in the sale transaction
12 between Barclays and Lehman?
13 A. There was no due diligence, as far as
14 I'm aware.
15 Q. Can you explain that answer a little
16 further?
17 A. I am the futures expert for Barclays,
18 and I was never at any time asked to look at any
19 records. We were never given any records.
20 Now...
21 Q. Now?
22 A. Were we in discussions with Lehman
23 separate from the acquisition to buy the futures
24 business? Yes, we were. Well, actually not to
25 buy. I would correct that. To actually take
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1 JAMES
2 customer futures business?
3 MS. BLOOMER: I am going to object to
4 the question and instruct the witness not to
5 answer to the extent it requires a
6 disclosure of communications that she had
7 with her counsel.
8 Q. OK, you can answer.
9 THE WITNESS: OK, now I'm confused,
10 because you say don't answer.
11 MS. BLOOMER: What I am telling you is
12 you can answer to the extent that it doesn't
13 require you to disclose communications that
14 you had with your lawyers.
15 THE WITNESS: OK.
16 Q. Maybe I could give you --
17 MS. BLOOMER: She has never been
18 deposed before.
19 A. Sorry.
20 MS. BLOOMER: Fair enough.
21 Q. That's fine. Maybe I could -- I tried
22 this before, let me try it again. I'm not
23 seeking in any of my questions for you to
24 testify as to matters about which you know only
25 because of conversations with counsel.
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1 JAMES
2 A. Right.
3 Q. So if you only know it, for example,
4 because you spoke to anyone at Boies Schiller or
5 anyone --
6 A. No, no. I was on the phone with the
7 CME when Jeff Jennings, who ran the Lehman
8 futures business, asked if we as Barclays would
9 be prepared to take over their customer
10 business.
11 Q. How did you come to be on that
12 telephone call?
13 A. The CME called me and my boss.
14 Q. Who is your boss?
15 A. Tim Stack.
16 Q. When did they call you and Mr. Stack?
17 A. Sunday, the 14th of September.
18 Q. Approximately what time?
19 A. Midnight.
20 Q. Midnight? So midnight, Sunday 14th,
21 early Monday morning?
22 A. Yes.
23 Q. And where were you when this call came
24 in?
25 A. My house.
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1 JAMES
2 Q. On Sunday evening around midnight?
3 A. Um-hm. Yes.
4 Q. What were you and -- withdrawn.
5 What were you working on that Sunday,
6 the 14th?
7 MS. BLOOMER: Objection, vague.
8 Q. You can answer.
9 A. We were looking at -- we were looking
10 at the markets and the volatilities based on
11 rumors of what was happening in the markets.
12 Q. Did those rumors relate in any way to
13 Lehman?
14 A. It was multiple entities.
15 Q. I take it from your prior testimony
16 that you were not involved prior to the call
17 with the CME and Mr. Stack in the transfer of
18 any Lehman business to Barclays?
19 A. No.
20 Q. This was the first discussion you had
21 with anybody --
22 A. Yup, yes.
23 Q. -- in connection with the transfer of
24 futures or any other business from Lehman to
25 Barclays?
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1 JAMES
2 Q. And where was Mr. Stack?
3 A. In my house. He -- well, actually,
4 the call originally came in while we were
5 actually in the cab on the way home. He was
6 dropping me and then going home, so we actually
7 got out of the cab, went into my house and made
8 the call.
9 Q. The call came in from whom?
10 A. The CME.
11 Q. To Mr. Stack?
12 A. Yeah.
13 Q. Do you know who from the CME called
14 Mr. Stack?
15 A. Kim Taylor.
16 Q. Who is Kim Taylor?
17 A. I am actually not sure of her official
18 title at the CME, but she is one of the senior
19 people at the CME.
20 Q. If I understood your prior testimony
21 correctly, you and Mr. Stack were leaving the
22 office?
23 A. Yes.
24 Q. And that's Barclays' office?
25 A. Yes, 200 Park.
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1 JAMES
2 A. Yes, correct.
3 Q. OK. Can you tell me -- sorry.
4 Is Kim Taylor, is that a man or woman?
5 A. Woman.
6 Q. What did Ms. Taylor say to you and
7 Mr. Stack?
8 A. She just asked would we be prepared to
9 have a conversation with Jeff Jennings from
10 Lehman about taking over their futures customers
11 business, and we said yes.
12 Q. Do you know what Mr. Jennings' role
13 was at Lehman?
14 A. He was the global head of the futures
15 business.
16 Q. Do you know if he is employed by
17 Barclays today?
18 A. He no longer is.
19 Q. Did he at one point take a position
20 with Barclays?
21 A. Yup.
22 Q. Do you know when he left Barclays'
23 employment?
24 A. It was at the beginning of the year.
25 March, April time. I'm actually not -- yeah.
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<p>1 JAMES</p> <p>2 Q. Beginning of 2009?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know where he is employed</p> <p>5 today?</p> <p>6 A. I believe he is at Credit Suisse. But</p> <p>7 I'm not 100 percent sure.</p> <p>8 Q. Approximately how long did the</p> <p>9 conversation with Ms. Taylor last on Sunday</p> <p>10 evening?</p> <p>11 A. It was literally a five-minute</p> <p>12 conversation. She -- it was an, "Are you</p> <p>13 prepared to talk to Jeff Jennings," and the</p> <p>14 response was, "Yes, we are," and she then put</p> <p>15 Jeff on the phone, so -- I suppose like a</p> <p>16 go-between.</p> <p>17 And then she put Jeff on the phone and</p> <p>18 we made arrangements to actually go into the</p> <p>19 Lehman offices on Monday morning.</p> <p>20 Q. Did Ms. Taylor remain on the phone</p> <p>21 while Mr. Jennings was on the phone with you and</p> <p>22 Mr. Stack?</p> <p>23 A. I'm actually not sure, to be honest.</p> <p>24 Q. And approximately how long did the</p> <p>25 whole conversation take?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 A. It was literally -- she introduced, we</p> <p>3 said yes, and we arranged then with Jeff to go</p> <p>4 into the offices on Monday morning. That was</p> <p>5 it. That was the whole of the conversation.</p> <p>6 Q. That affirmative yes was a decision by</p> <p>7 Mr. Stack or you?</p> <p>8 A. Mr. Stack.</p> <p>9 Q. Did you then proceed to have that</p> <p>10 meeting at Lehman on Monday morning?</p> <p>11 A. Yes, we did.</p> <p>12 Q. What time did that take place?</p> <p>13 A. I think it was 9 a.m.</p> <p>14 Q. And that's Lehman's offices at 745 7th</p> <p>15 Avenue?</p> <p>16 A. Right, correct.</p> <p>17 Q. Who was present for that meeting?</p> <p>18 A. There was Tim Stack, myself, Sean</p> <p>19 Byrne, B-Y-R-N-E, Alexandra Guest, who are all</p> <p>20 Barclays employees. There was Ken Raisler, who</p> <p>21 is our counsel.</p> <p>22 Q. Sullivan & Cromwell; is that right?</p> <p>23 A. Yeah.</p> <p>24 And then from the Lehman side, there</p> <p>25 was Jeff Jennings, Donna Moran, Adam Cohen,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Michael Macchiavernia, and Ron Filler. And Mike</p> <p>3 Nielsen was on the phone.</p> <p>4 Q. Just starting with the Barclays</p> <p>5 employees, Tim Stack's position at the time was?</p> <p>6 A. Global head of futures for Barclays.</p> <p>7 Q. Is that his position today?</p> <p>8 A. Yes.</p> <p>9 Q. And you're currently employed as</p> <p>10 director in the futures sales department for</p> <p>11 Barclays?</p> <p>12 A. Correct, yeah.</p> <p>13 Q. Was that your title at the time?</p> <p>14 A. Yes.</p> <p>15 Q. And Sean Byrne, what was his title?</p> <p>16 A. Sean was the U.S. futures head at that</p> <p>17 time.</p> <p>18 Q. Is he currently employed by Barclays?</p> <p>19 A. He is.</p> <p>20 Q. What's his role today?</p> <p>21 A. He runs sales and trading for futures.</p> <p>22 Q. Alexandra Guest, what was her --</p> <p>23 A. Is our compliance officer.</p> <p>24 Q. And was she your compliance officer at</p> <p>25 the time of the meeting?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 A. Yeah.</p> <p>3 Q. So we have four Barclays employees</p> <p>4 there?</p> <p>5 A. Yes.</p> <p>6 Q. If you indicate affirmatively, it is</p> <p>7 easier for Mary to take down.</p> <p>8 A. Sorry.</p> <p>9 Q. So on the Lehman side, we have</p> <p>10 discussed Jeff Jennings already. The second</p> <p>11 person you identified was Donna?</p> <p>12 A. Donna Moran, and she was sales.</p> <p>13 Q. Is she employed by Barclays today?</p> <p>14 A. No.</p> <p>15 Q. Did she ever take a position at</p> <p>16 Barclays?</p> <p>17 A. Yes, she did.</p> <p>18 Q. Do you know when she left?</p> <p>19 A. It was the end of the summer.</p> <p>20 Q. Do you know where she is employed</p> <p>21 today?</p> <p>22 A. I don't believe she is.</p> <p>23 Q. You don't believe she is employed by</p> <p>24 anyone?</p> <p>25 A. No.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

Q. Do you know what Adam Cohen's position was at Lehman at the time?

A. A relationship manager.

Q. Did he take a position with Barclays?

A. Yes.

Q. What was that position?

A. It is the same position, relationship manager.

Q. Is he still employed by Barclays today?

A. Yes, he is.

Q. In that same position?

A. Yes, he is.

Q. I am going to murder the next one. Michael Macchiavernia?

A. Macchiavernia. I have the same problem.

He was the front office IT liaison, I suppose.

Q. Did he take a job with Barclays?

A. Yes, he did.

Q. What position did he take in Barclays?

A. He now works in the product department.

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JAMES

Q. I take it from your answer that he is currently employed by Barclays?

A. Yes, he is.

Q. I think you said that a gentleman by the name of Ron Filler was on the phone?

A. No. Ron Filler was in the room. Mike Nielsen was on the phone.

Q. I'm sorry.

A. That's OK.

Q. Ron Filler's position at the time was?

A. From what I understand, he was there as a consultant because he was their legal counsel.

Q. You believe he was in-house counsel for Lehman?

A. But I don't --

MS. BLOOMER: Objection to form.

Q. You can answer.

A. OK. I believe he was actually no longer employed. I think he was there as a consultant.

Q. I understand. And Mike Nielsen was on the phone?

A. Yup.

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JAMES

Q. Who is Mike Nielsen?

A. He is their -- he was their global operations manager, for futures.

Q. Did he take a position with Barclays?

A. No.

Q. Do you know where he is employed today?

A. He went to work for a charity. I have no idea which one.

Q. Approximately how long did this meeting last on Monday, the 15th?

A. I think around an hour and a half from memory, but that's from memory.

Q. Did you take any notes of this meeting?

A. No.

Q. Do you know if any of the Barclays employees took notes at the meeting?

A. No, I don't think we did.

Q. Do you know if any of the Lehman attendees took notes at the meeting?

A. I don't know.

Q. You don't remember, sitting here today, whether anyone was taking notes?

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JAMES

A. No.

Q. Can you tell me as best you can recall what was discussed during those one and a half hours?

A. It was a very high-level discussion on the exchanges where the customers were trading, what types of customers they had, and what we thought would be the best way for transitioning the business from Lehman to Barclays.

Q. Was there any discussion of a consideration being paid?

A. No, none whatsoever.

Q. Do you know why that was?

A. No. I'm assuming because -- my assumption, nothing more -- because they approached us. It wasn't us approaching them.

Q. Do you have an understanding of why Lehman approached Barclays to transfer their futures business?

A. From my understanding, they actually approached a couple of brokers. We were not the only people.

Q. Who else do you understand they approached?

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<p>1 JAMES</p> <p>2 A. I don't know.</p> <p>3 Q. Was the discussion at that meeting on</p> <p>4 the 15th about the transfer of only Lehman --</p> <p>5 only Lehman's futures business as relates to</p> <p>6 customers?</p> <p>7 A. Correct.</p> <p>8 Q. Was there any discussion of</p> <p>9 transferring Lehman's business as it relates to</p> <p>10 proprietary trading?</p> <p>11 A. No.</p> <p>12 Q. Was there any discussion of transfer</p> <p>13 of Lehman's business as it relates to trading</p> <p>14 that they conducted on behalf of Lehman</p> <p>15 affiliates?</p> <p>16 A. No, because Lehman affiliates, to us</p> <p>17 it gets classed as proprietary business. So it</p> <p>18 was purely customer.</p> <p>19 Q. Was there any discussion that you</p> <p>20 recall during that meeting on the 15th of any</p> <p>21 risks that Barclays would run in assuming</p> <p>22 Lehman's customer futures business?</p> <p>23 A. It depends on what you mean by risk.</p> <p>24 Can we just --</p> <p>25 Q. Sure. Let's define risk as broadly as</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 possible.</p> <p>3 MS. BLOOMER: Can you just read the</p> <p>4 question again.</p> <p>5 THE WITNESS: Yeah. Terminology.</p> <p>6 (Record read)</p> <p>7 A. When you are taking over a futures</p> <p>8 business, the risks are going to be associated</p> <p>9 with how that company runs their business. So</p> <p>10 are there risks? Yes. Can you clarify them at</p> <p>11 that time of discussion? No. You are only</p> <p>12 going to know the risks once you actually get</p> <p>13 into the details, and there was no details.</p> <p>14 Q. What details would you need to</p> <p>15 understand the risks that you have just</p> <p>16 described?</p> <p>17 A. You would need to know how they</p> <p>18 operate their books and records, whether their</p> <p>19 books and records were clean, whether they were</p> <p>20 reconciled, how they looked after their money,</p> <p>21 where they had their money segregated and</p> <p>22 secured. Basically how they transacted their</p> <p>23 operations.</p> <p>24 Q. It is your understanding, Ms. James,</p> <p>25 that at some point Barclays did assume</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 responsibility for Lehman's futures customer</p> <p>3 business, correct?</p> <p>4 MS. BLOOMER: Objection to form.</p> <p>5 Q. Is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have an understanding of the</p> <p>8 date at which Barclays assumed responsibility</p> <p>9 for the customer futures operation from Lehman?</p> <p>10 A. When the acquisition was finalized.</p> <p>11 Q. That was September 22, 2008?</p> <p>12 A. Yes.</p> <p>13 Q. Prior to September 22, 2008, which</p> <p>14 I'll also refer to as the closing of the deal --</p> <p>15 A. OK.</p> <p>16 Q. -- did Barclays perform any due</p> <p>17 diligence on the details that you have just</p> <p>18 testified to?</p> <p>19 A. No.</p> <p>20 Q. Can you tell me why that was?</p> <p>21 A. Because without -- one of the issues</p> <p>22 is that Lehman's were not in a clean state to</p> <p>23 actually provide any information. Plus until</p> <p>24 you acquire the business, trying to ask for some</p> <p>25 of that information of course is confidential,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 so -- that you can talk in a high-level</p> <p>3 discussion about the kinds of accounts and the</p> <p>4 kinds of business. You can't really get into</p> <p>5 the detail of what's there.</p> <p>6 So all of the discussions were high</p> <p>7 level about taking over the business, rather</p> <p>8 than actually digging into what was there.</p> <p>9 Q. Do you have any knowledge of the</p> <p>10 requests for information that Barclays did make</p> <p>11 of Lehman prior to September 22, 2008, in</p> <p>12 connection with the potential takeover of the</p> <p>13 Lehman futures customers business?</p> <p>14 A. Only -- hang on. Can we just clarify</p> <p>15 that. Are you meaning in regards to the deal</p> <p>16 that was being done by the broker dealer or in</p> <p>17 regards to the conversations we are having for</p> <p>18 just the futures business?</p> <p>19 Q. It is a good distinction you make.</p> <p>20 Let's take the futures business first.</p> <p>21 A. So the futures business, yes. Because</p> <p>22 it was the meeting on the Monday that I was at,</p> <p>23 which were all high-level conversations, but we</p> <p>24 never requested any information, if that</p> <p>25 makes -- it was general conversation, not</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES 2 detailed information. 3 Q. So in connection with the discussions 4 separate and apart from the larger transaction 5 that was finalized and closed on the 22nd of 6 September -- 7 A. Yeah. 8 Q. -- did you ask for any information or 9 did Barclays ask for any information about 10 Lehman's futures customer business -- 11 A. Not that I am aware. 12 Q. -- other than that meeting? 13 A. Not that I am aware. 14 MS. BLOOMER: I am going to note for 15 the record, this is somewhat in my view 16 beyond the scope of the 30(b)(6). So to the 17 extent that she is not aware, that shouldn't 18 be taken as the fact that Barclays isn't 19 aware. 20 MR. OXFORD: That's understood. 21 Q. Have we exhausted your testimony, 22 Ms. James, on the topic of Barclays assuming the 23 Lehman customer business outside of a larger 24 transaction? 25 MS. BLOOMER: I am going to object to TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 the form of the question. 3 Q. Do you understand my question? 4 A. I think so. Yeah, I think that's 5 everything. 6 Q. Turning now to the other topic that 7 you have introduced, the -- the transaction that 8 closed on September 22, between Barclays and 9 Lehman, can you tell me, please, what your role 10 was, if any, in connection with that 11 transaction? 12 A. Prior to the September 22, I had no 13 involvement in the negotiations of the deal. 14 Q. Do you know who was involved in the 15 negotiations of the deal? And directing my 16 question specifically to the futures and 17 derivatives business. 18 A. I believe the deal team was run by 19 Stephen King. 20 Q. Do you know who else was on the deal 21 team? 22 A. No. 23 Q. Safe to say that you were not part of 24 that deal team? 25 A. Correct. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 Q. Do you recall having any conversations 3 with Mr. King in connection with the activities 4 of the deal team prior to the closing of the 5 transaction? 6 A. There were conversations on Sunday, 7 21st, which are actually in regards to some 8 information that was sent to Mr. King and 9 Mr. Stack, which is actually covering in the 10 questions which they asked me to look at and 11 translate. 12 Q. We will get to those specifics in a 13 minute, but just speaking generally just now, 14 can you tell me what you recall about those 15 conversations with Mr. King and Mr. Stack on 16 Sunday, the 21st? 17 MS. BLOOMER: I just want to be clear 18 that I'm going to object to the extent that 19 you were involved in discussions with any 20 lawyers at the time and to not disclose the 21 contents of any of those communications. 22 A. OK. It's purely what's in my 23 questions here that we have been -- that we are 24 looking at, in the fact that Mr. Stack and 25 Mr. King received e-mails from Lehman, which are TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 referred to in my -- you know, and could I 3 translate, could I explain what those reports 4 actually meant. 5 MR. OXFORD: Just for the record, so 6 we are clear, the witness is indicating that 7 she is looking at Exhibit -- 8 A. It's my notes. Sorry. 9 MR. OXFORD: -- 552. 10 MS. BLOOMER: Whenever you're ready, I 11 think we are getting close to a time for a 12 brief break. 13 MR. OXFORD: Now is a good time, if 14 you want to take a brief break. 15 MS. BLOOMER: Thank you, I appreciate 16 that. 17 (Recess) 18 BY MR. OXFORD: 19 Q. Do you recall, Ms. James, that the -- 20 whether the conversations you just testified to 21 before the break with Mr. King and Mr. Stack 22 related to options or futures positions? 23 A. The conversations were based on a 24 report that was sent to Mr. Stack to -- asking 25 me to explain the details of the report. So TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES</p> <p>2 Mr. Stack, Mr. King did not know how to read</p> <p>3 what the numbers -- what it meant.</p> <p>4 Q. And did this report relate to futures</p> <p>5 or --</p> <p>6 A. It was --</p> <p>7 Q. Or options?</p> <p>8 A. It was the report from the OCC, which</p> <p>9 actually covers both.</p> <p>10 Q. And we will get to the detail of it</p> <p>11 shortly. This is the OCC report that you</p> <p>12 reference in page 1 of your notes --</p> <p>13 A. Yes.</p> <p>14 Q. -- marked as Exhibit 552?</p> <p>15 A. Correct.</p> <p>16 MS. BLOOMER: I'm just going to object</p> <p>17 to the form. There are a couple of</p> <p>18 different reports noted, so I just want to</p> <p>19 be clear.</p> <p>20 Q. What was Mr. King's position at</p> <p>21 Barclays?</p> <p>22 A. I don't know because I never met him</p> <p>23 before.</p> <p>24 Q. When was the first --</p> <p>25 A. Sunday, the 21st.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Q. Where did you meet Mr. King?</p> <p>3 A. In the offices in 200 Park.</p> <p>4 Q. Do you recall approximately what time</p> <p>5 of day?</p> <p>6 A. No.</p> <p>7 Q. What were you doing in the office on</p> <p>8 Sunday, the 21st?</p> <p>9 A. We were in the office on the Sunday,</p> <p>10 trying to just make sure we were good due to</p> <p>11 volatile -- it was a crazy week, from a market</p> <p>12 perspective, and actually looking to make sure</p> <p>13 that we had the letters in place for taking over</p> <p>14 the futures business on the Monday morning, and</p> <p>15 making sure that the clearing houses knew that</p> <p>16 we would be taking over and we would be</p> <p>17 responsible for the positions, and creating a</p> <p>18 list of what we would require from the Lehman</p> <p>19 operation guys once we took over.</p> <p>20 Q. You referenced letters in your prior</p> <p>21 answer. Can you explain a little more what you</p> <p>22 mean?</p> <p>23 A. Due to Barclays buying Lehman or</p> <p>24 acquiring Lehman, however we want to term it,</p> <p>25 the clearing houses were not comfortable that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 the margin calls that would have been made on</p> <p>3 Monday morning would be satisfied by Lehman.</p> <p>4 They thought there was a risk.</p> <p>5 So we as Barclays agreed to guarantee</p> <p>6 that payment on the Monday morning. We</p> <p>7 assumed -- you know, we guaranteed from the</p> <p>8 clearing house perspective, we would make the</p> <p>9 margin call for the customer accounts. If not,</p> <p>10 then all the customer accounts would have been</p> <p>11 in default, which had been a major issue.</p> <p>12 That's a major risk.</p> <p>13 Q. Did Barclays agree to guarantee just</p> <p>14 customer accounts at these clearing houses?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Did Barclays ever agree to guarantee</p> <p>17 proprietary accounts?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Do you have any understanding of why</p> <p>20 that -- why there was a difference in Barclays'</p> <p>21 approach between customers and proprietary</p> <p>22 trades?</p> <p>23 A. On the futures side of the business,</p> <p>24 which I was involved with, there was no house</p> <p>25 positions we were made to be understand.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 MS. BLOOMER: I am sorry, I didn't</p> <p>3 hear that.</p> <p>4 A. I am sorry. There was no -- on the</p> <p>5 futures side of the business, we were made to be</p> <p>6 understand that there was no house positions.</p> <p>7 MS. BLOOMER: OK.</p> <p>8 A. Yet on the OCC side, I believe there</p> <p>9 was. I know, I now know there was, but I don't</p> <p>10 know whether Barclays guaranteed it to the</p> <p>11 exchange or not. I don't know. They may have</p> <p>12 done.</p> <p>13 Q. And by the OCC side, you're referring</p> <p>14 to options generally?</p> <p>15 A. Yes.</p> <p>16 MS. BLOOMER: Objection to form.</p> <p>17 Q. Did Lehman clear options through any</p> <p>18 organization other than OCC?</p> <p>19 A. I don't know, to be honest.</p> <p>20 Q. And the operations for which Barclays</p> <p>21 assumed responsibility, did you ever come to</p> <p>22 learn that Lehman cleared trades through any</p> <p>23 organization other than the OCC?</p> <p>24 MS. BLOOMER: Objection to form. You</p> <p>25 said trades this time, not options, just to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES</p> <p>2 clear the record.</p> <p>3 A. Sorry, do we mean just equity options</p> <p>4 or any options? Just, I just need to clarify</p> <p>5 which ones.</p> <p>6 Q. Let's start with equity options.</p> <p>7 A. I actually don't know that because I'm</p> <p>8 not in the OCC world. So -- I'm not in the</p> <p>9 equity option world. I stand corrected on this.</p> <p>10 But were there options on other exchanges? Yes.</p> <p>11 Which is --</p> <p>12 Q. And did those exchanges clear through</p> <p>13 OCC?</p> <p>14 A. No. Not for the equity options. Or</p> <p>15 not for other options, no. Sorry, can we</p> <p>16 just --</p> <p>17 Q. Did you ever come to learn that Lehman</p> <p>18 had house positions on futures?</p> <p>19 A. There -- I came to learn after the</p> <p>20 fact, so after the 22nd, that there were</p> <p>21 positions for their affiliates that were trading</p> <p>22 that were sitting in the house accounts for</p> <p>23 futures, and for their equity options, I had</p> <p>24 found out that they had house equity options,</p> <p>25 and then they had affiliates trading, and their</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 positions were actually in customer and house.</p> <p>3 But that was after -- that was after the 22nd.</p> <p>4 I didn't know prior.</p> <p>5 Q. When you say in customer and house,</p> <p>6 can you be a little bit more specific.</p> <p>7 A. Normal practice is your affiliate</p> <p>8 business gets carried as house positions. It</p> <p>9 gets carried as proprietary. Lehman had</p> <p>10 commingled some of their proprietary trades in</p> <p>11 with their customer business.</p> <p>12 Q. Other than the OCC reports that you</p> <p>13 reference on page 1 of your notes, Exhibit 552,</p> <p>14 did Mr. King or Mr. Stack ask you to review any</p> <p>15 other data from Lehman in connection with either</p> <p>16 futures or options?</p> <p>17 A. No, no.</p> <p>18 Q. My question --</p> <p>19 MS. BLOOMER: Objection to form.</p> <p>20 Q. My question is, prior to the closing?</p> <p>21 A. Oh, no.</p> <p>22 Q. You described yourself early in this</p> <p>23 deposition as Barclays' expert on futures?</p> <p>24 A. Correct.</p> <p>25 Q. Is there anybody else in Barclays with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 the level of expertise on futures that you have?</p> <p>3 A. No.</p> <p>4 Q. So you have no reason to believe that</p> <p>5 there is someone else within Barclays who was</p> <p>6 looking at information on Lehman's futures prior</p> <p>7 to the closing?</p> <p>8 MS. BLOOMER: Objection to the form.</p> <p>9 Mischaracterizes her testimony.</p> <p>10 MR. OXFORD: Can you read the question</p> <p>11 back, please, Mary?</p> <p>12 (Record read)</p> <p>13 A. I don't know somebody else was</p> <p>14 looking. They may have been. Would they have</p> <p>15 had as much futures knowledge as me? No.</p> <p>16 Q. Do you know why it is that Mr. Stack</p> <p>17 was not able to read the OCC reports that you</p> <p>18 were asked to interpret?</p> <p>19 MS. BLOOMER: Objection, foundation.</p> <p>20 A. I'm assuming because he has never seen</p> <p>21 one before. That is an assumption.</p> <p>22 Q. I am going to turn to your declaration</p> <p>23 shortly, but just before we do that, I wanted to</p> <p>24 see if we could agree on some terms to make the</p> <p>25 deposition go a little smoother.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Do you have an understanding, in</p> <p>3 connection with your experience in the futures</p> <p>4 and options industry, of what the term "initial</p> <p>5 margin" means?</p> <p>6 A. Yes. I understand what initial margin</p> <p>7 is.</p> <p>8 Q. Can you tell me what that is, please?</p> <p>9 A. Initial margin is the money that is</p> <p>10 required by the clearing house as security</p> <p>11 against the position you are trading.</p> <p>12 Q. Is that a term that's used both within</p> <p>13 the options industry and the futures industry?</p> <p>14 A. Yes.</p> <p>15 Q. And the definition is --</p> <p>16 A. The same.</p> <p>17 Q. -- applicable to both industries?</p> <p>18 A. Yes.</p> <p>19 Q. Same set of questions for maintenance</p> <p>20 margin.</p> <p>21 A. Maintenance margin is exactly the same</p> <p>22 as initial margin. It is the requirement that</p> <p>23 you put up with the exchange to cover the</p> <p>24 position you're trading. Maintenance margin is</p> <p>25 used against a member of an exchange because it</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 is normally a lower rate than initial margin.

3 Q. So to make sure I understand the
4 distinction, is it correct to say that a
5 customer would be -- a customer of Lehman's, for
6 example, would be required to post initial
7 margin in connection with a position on an
8 exchange?

9 A. Yes.

10 MS. BLOOMER: Objection to the form.

11 Q. And if this were to be a proprietary
12 position placed by Lehman, would that be
13 described as maintenance margin?

14 MS. BLOOMER: Objection to the form of
15 the question. Are you asking hypothetically
16 or are you -- can you just clarify the
17 question?

18 MR. OXFORD: Yeah. I'm seeking to
19 understand the difference between initial
20 margin and maintenance margin. The witness
21 explained that maintenance margin was
22 something that was posted by a member of the
23 exchange.

24 Q. Is that the only difference between
25 initial and maintenance margin?

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1 JAMES

2 A. Yes.

3 Q. Same questions for exchange minimum
4 margin.

5 MS. BLOOMER: Objection to the form of
6 the question. Please ask her a question.

7 Q. Do you have familiarity in your
8 experience in the industry with the term
9 "exchange minimum margin"?

10 A. Exchange minimum margin is maintenance
11 margin. It is the same thing.

12 Q. Mr. Romain used in his deposition
13 yesterday a term called "open trade value." Do
14 you have an understanding of what that phrase
15 means in the context of a futures and options
16 industry?

17 MS. BLOOMER: Objection, foundation.

18 A. Can I clarify? Did he use "open trade
19 value" or "open trade equity"?

20 Q. Value.

21 A. Then I can't guarantee that I know
22 what he means. If he said "open trade equity,"
23 yes. Open trade value, no.

24 Q. What does open trade equity mean to
25 you?

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1 JAMES

2 A. Open trade equity is the value of an
3 open positions on a customer's account. It is
4 the current market value.

5 Q. And does that include both assets and
6 liabilities within that account?

7 MS. BLOOMER: Objection to the form of
8 the question.

9 A. What do you mean by assets and
10 liabilities?

11 Q. Let me ask it this way. Could that --
12 if the open trade equity on a customer's
13 account -- withdrawn.

14 Could the open trade equity on a
15 customer's account be positive as well as
16 negative?

17 A. Yes.

18 Q. If I were to use the phrase "net open
19 trade equity," would you understand what I
20 meant?

21 MS. BLOOMER: Objection to the form
22 and foundation.

23 A. No. Because I would need you to
24 elaborate some more. Sorry.

25 Q. The phrase "open trade equity" in

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1 JAMES

2 connection with a customer's account, does that
3 refer in your understanding to the net of all
4 the customer's positions?

5 MS. BLOOMER: Objection to the form.

6 A. It depends on how you are asking the
7 question, which is why I am -- because you can
8 ask what is the open trade equity per product or
9 you can ask what is the open trade -- the total
10 open trade equity. So --

11 Q. Right. I see. I think -- I hope we
12 are no longer talking past each other.

13 There is -- for each customer account,
14 there is open trade equity on each position?

15 A. Correct.

16 Q. And when the net of those positions is
17 added together, one gets to the total open trade
18 equity?

19 A. Correct.

20 Q. Do you have an understanding of what
21 the phrase "mark to market" means in the context
22 of the options and futures business?

23 MS. BLOOMER: Objection to the form.

24 A. Mark to market actually has two
25 meanings. And unfortunately, it depends on --

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1 JAMES
2 so mark to market either is exactly the same as
3 open trade equity, or some people say mark to
4 market is the difference between yesterday's
5 closing price and today's closing price, so...
6 Q. How is the term "mark to market" used
7 in the context of the OCC reports that you have
8 testified about that are reflected on page 1 of
9 your notes?
10 MS. BLOOMER: Objection, foundation.
11 A. I don't believe we actually talk about
12 mark to market on our report.
13 Q. I don't think it is specifically
14 referenced in your notes. We can look at a
15 document later. I'm just trying to do this
16 efficiently.
17 If OCC marks a position to market, do
18 you have an understanding of what that means?
19 A. If-- it is normally yesterday's
20 closing price to today's closing price.
21 Q. And that means at the end of trading,
22 for example, on September 19, the OCC would mark
23 the value of those positions as at the close of
24 September 19 on the OCC's books?
25 MS. BLOOMER: Objection.
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1 JAMES
2 Q. And does the exchange from time to
3 time, depending on the movement of the markets,
4 does that exchange sometimes request additional
5 margin?
6 A. Yes.
7 MS. BLOOMER: I am going to object to
8 the form of the question, and just for the
9 sake of clarity, there are obviously
10 differences in the way that futures and
11 options work. I mean you're talking about
12 the OCC, you're talking about both.
13 So I just caution you that the record
14 can get very confused if you are not
15 specific.
16 Q. OK. And what is the term that you
17 would use to describe that additional margin
18 required by the OCC?
19 A. It is still initial margin.
20 Q. I am sorry, can you explain to me
21 again the open trade value and how that fits
22 into the mark to market?
23 MS. BLOOMER: Objection to form. Did
24 you mean open trade value or equity?
25 Q. Open trade equity. Sorry.
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1 JAMES
2 Q. Is that your understanding?
3 A. Yes.
4 Q. And do you also have an understanding
5 of whether that mark to market that we have just
6 discussed is the basis on which an exchange such
7 as the OCC calculates the margin requirement?
8 MS. BLOOMER: Objection.
9 A. Which margin requirement? The initial
10 margin or the open trade equity? It is --
11 Q. Either.
12 MS. BLOOMER: Objection to the form.
13 A. Can we go back over that.
14 (Record read)
15 A. I think we need to clarify margin,
16 because the exchange will calculate two numbers.
17 They will calculate the initial margin and they
18 will calculate your open trade equity, your mark
19 to market, your unrealized, whichever
20 terminology you want, which is also classed as
21 margin. So we need to be specific.
22 Q. Is the initial margin the margin that
23 is required by the exchange when the position is
24 first opened?
25 A. Yes.
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1 JAMES
2 A. Open -- hang on. Can we go back and
3 say that again. Sorry.
4 (Record read)
5 A. They are the same, so mark to market
6 is the difference between last night's closing
7 price and tonight's closing price. Open trade
8 equity is the difference between last night's
9 closing price and tonight's closing price, or it
10 can be the difference between original trade
11 price and last night's closing price.
12 Q. I think we have covered this, but we
13 have a pretty messy record, so let me try this
14 one more time.
15 Is it your understanding that the
16 exchanges such as the OCC mark positions to
17 market each evening?
18 A. They actually mark twice.
19 Q. When do they mark?
20 A. They mark in intraday and they mark
21 end of day. And that's to cover the futures and
22 the options. Yeah.
23 Q. Does intraday marking happen in both
24 the futures market and the options market?
25 MS. BLOOMER: Objection to the
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1 JAMES
2 foundation.
3 A. I'm not sure with the options. It
4 does in the futures. We would need to confirm
5 with the options.
6 Q. And that mark to market process, do
7 you understand that to be the basis on which
8 exchanges such as the OCC calculate the margin
9 requirement of its exchange members?
10 A. Just to be specific, the margin
11 requirement, we are talking about the initial
12 margin and the open trade equity, the mark to
13 market?
14 Q. Yes.
15 A. Yes.
16 Q. I hope that was helpful. I don't know
17 whether it will be or not. We will find out.
18 Could you have Exhibit 535-A in front
19 of you. It is your declaration.
20 A. Yeah.
21 Q. If you could turn your attention first
22 of all to paragraph 2.
23 Can you tell me what your position was
24 with Barclays prior to March 1, 2006?
25 A. I was an associate director. Still
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1 JAMES
2 paragraph 1 that this is all based on
3 personal knowledge.
4 Q. So that's what I am looking for. I'm
5 not interested in your conversation with
6 counsel, as we have discussed before. I would
7 like to know what the basis is for your
8 statement in paragraph 3.
9 MS. BLOOMER: Again, instruct you not
10 to answer to disclose privileged
11 information.
12 A. Can you clarify for me what you're
13 after? Sorry.
14 Q. I'm probably complicating it
15 unnecessarily.
16 How is it that you know Barclays
17 acquired LBI's exchange traded derivatives and
18 Barclays then existing business as a futures
19 commission merchant?
20 A. Now, I can't answer that because I was
21 told by legal counsel.
22 MS. BLOOMER: You can answer the
23 question to the extent your personal
24 knowledge tells you that the acquisition
25 occurred.
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1 JAMES
2 within the futures department.
3 Q. And was that your position from when
4 you joined Barclays in 2001 through 2006?
5 A. Yes.
6 Q. Paragraph 3, you say, "On
7 September 22, 2008, defined as the closing,
8 Barclays acquired, among other things, LBI's
9 exchange traded derivatives and LBI's then
10 existing business as a futures commission
11 merchant."
12 MS. BLOOMER: Is there a question?
13 MR. OXFORD: Yes.
14 Q. Do you see that?
15 A. Yup.
16 Q. What's the basis for your knowledge
17 about that? There --
18 MS. BLOOMER: I am going to object to
19 the form of the question. The witness is
20 instructed not to answer the question to the
21 extent it requires her to disclose
22 communications that she had with counsel.
23 MR. OXFORD: Sure. And I will just
24 point out before the witness answers this
25 question, there is a declaration in
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1 JAMES
2 A. That's exactly what happened. I was
3 told by legal counsel.
4 Q. Independent of legal counsel, you
5 can't answer that -- withdrawn.
6 Independent of your discussion with
7 legal counsel, you don't have any basis for
8 knowing what Barclays acquired and didn't
9 acquire?
10 MS. BLOOMER: I am going to object to
11 the question.
12 I want the record to be clear, you can
13 explain your personal experience to the
14 extent it tells you anything about whether
15 an acquisition took place of these
16 particular businesses or not.
17 THE WITNESS: OK.
18 MS. BLOOMER: You just can't explain
19 communications that you had that led to that
20 understanding. OK?
21 THE WITNESS: OK.
22 MR. OXFORD: I think objection to form
23 is the proper objection there, Trish.
24 MS. BLOOMER: I just want to be sure
25 that the witness understands the distinction
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<p>1 JAMES 2 between what she can and cannot discuss. 3 MR. OXFORD: I think that's clear. 4 Q. Turning to paragraph 4, you say, "As 5 of the closing, LBI held open futures including 6 futures and options on futures that were traded 7 on both domestic and foreign exchanges." 8 Do you see that? 9 A. Yes. 10 Q. You make a distinction between futures 11 and options on futures. Can you explain to me 12 the difference between the two? 13 A. The reason there is a distinction is 14 because people have the habit of when you say 15 options, thinking you mean equity options, which 16 are the OCC options. And in this instance, we 17 are talking about the options that are traded on 18 the futures exchanges and cleared in a futures 19 account. 20 Q. You say "this instance." What do you 21 mean by "this instance"? 22 A. Well, what I mean by "this instance," 23 I am -- where I am saying held -- they -- if I 24 just said they held open futures, yeah, in my 25 declaration, it wouldn't have covered the fact TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 that there was options as well on the futures, 3 which is why we clarified. But if we said 4 options in my declaration, people assume I mean 5 equity options. 6 Q. I understand. 7 A. Yeah. 8 Q. Got you. Thank you. 9 A. Sorry. 10 Q. No, no. 11 Can you give me to the best of your 12 ability the list of domestic and foreign 13 exchanges on which LBI held these open futures? 14 A. Yes. Is it listed? No, we didn't. 15 Sorry, I thought we actually had the list of 16 them, but we don't. 17 And you want the exchanges? Can I 18 just clarify, you want the exchanges, not the 19 clearing houses, yeah? 20 Q. Yes. We will get to clearing houses, 21 but I'm just trying to -- this is a little 22 painful, but I need to go through your 23 declaration to make sure I understand what you 24 are talking about. 25 A. So the exchanges were Chicago TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 Mercantile Exchange; NYMEX, New York Mercantile 3 Exchange; COMEX, which is the Commodity Options 4 Mercantile Exchange; the CBOT, which is the 5 Chicago Board of Trade. 6 The ISE U.S. Exchange; the CCFE, which 7 is the Chicago Climate Futures Exchange; the 8 CFE, which is the Chicago Futures Exchange; the 9 Kansas City Board of Trade. 10 The London International Financial 11 Futures Exchange; the Eurex Exchange; the SIMEX 12 Exchange, which is Singapore International 13 Monetary Fund; TSE, which is the Tokyo Stock 14 Exchange; TIFFE, which is the Tokyo 15 International Financial Futures Exchange. 16 There is the Korean and I can't think 17 of the name of the exchange. Sorry. And the 18 Malaysian Ringgit. And Montreal, Canada. And 19 Australia, which is the SFE. 20 I think that's all of them. 21 Q. OK. 22 A. Forgive me if I have missed. 23 Q. You're forgiven. If you remember any 24 others as you go through, just feel free to 25 supplement the record. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Taking the list of domestic exchanges 3 first, can you tell me where those futures are 4 cleared? 5 A. So the clearing house that they use? 6 Q. Yes. 7 A. CME, NYNEX, COMEX and CBOT all clear 8 through the CME clearing house. 9 ISE U.S. clears through ISE U.S., so 10 it clears through itself. 11 CFE clears through the OCC. 12 CCFE clears through the Clearing 13 Corporation. 14 Q. Kansas City Board of Trade? 15 A. Kansas City Board of Trade clears 16 through the Clearing Corporation. 17 Q. I presume from your answers that the 18 OCC is the Options Clearing Corporation? 19 A. Correct. 20 Q. And that's distinct from the Clearing 21 Corporation? 22 A. Correct. 23 Q. Where is the Clearing Corporation 24 based? 25 A. Chicago. TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

Q. Turning quickly to the international exchanges, can you tell me where they are cleared, if you know?

A. LIFFE is cleared at the LCH, which is the London Clearing House.

Eurex is Eurex, which is Germany.

Q. That's self-clearing?

A. It is self-clearing, yeah.

And all of the others are actually independent clearing houses based with the exchanges.

Q. OK. Can you read the next sentence just to yourself, the second sentence of paragraph 4, and let me know when you're done.

A. Yup.

Q. You have a reference there to "non-affiliated clearing broker accounts," Ms. James. Can you explain what you mean?

A. Correct. The reason we say non-affiliated is because Lehman had what we would term broker accounts with their affiliate counterparts for certain exchanges, but then they also had relationships for broker accounts with entities that were not affiliated to them, TSG Reporting - Worldwide 877-702-9580

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JAMES

non-affiliated brokers and foreign clearing corporations?

A. They are actually on my Exhibit 1 and 2 as well. So they are actually Bank of Montreal, Kenanga, Macquarie, MF Global, Newedge. That's it. Oh, Samsung. And Polaris. I missed one. Apologies.

Q. Can you turn the page on your declaration and look at paragraph 6, please. You say, "As of closing, LBI held open LBI proprietary futures in nine different accounts."

Do you see that?

A. Yup.

Q. Which were those nine accounts?

A. Their proprietary trades were held in -- they are actually the ones that are listed on Exhibit 1.

Q. To your declaration?

A. Yes. The only one that's not on there is the CFE, which is the VIX, but apologies, because I'm not sure if you said brokers or clearing houses, so I don't -- so I'm just clarifying.

Q. What I said was -- I asked you --

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JAMES

i.e., for example, Macquarie or Kenanga.

Q. And the accounts with the number of U.S. clearing corporations, they are the clearing corporations that you testified to a minute ago?

A. Yes, they are.

Q. The next sentence, you referred to foreign futures being maintained in accounts with a number of foreign affiliates, and non-affiliated brokers and foreign clearing corporations. Do you see that?

A. Yup, correct.

Q. Can you tell me which were the foreign affiliates you referenced?

A. The foreign affiliates, Lehman Japan, Lehman Korea, Lehman Singapore, and LBIE. Lehman Brokers International Europe, I believe is their full name.

Q. I see you're looking at your declaration. Which exhibit?

A. Yes. Sorry. I looked at Exhibit 1, because I don't necessarily remember their names.

Q. Do you remember the list of TSG Reporting - Worldwide 877-702-9580

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JAMES

A. I believe it just says nine different accounts. Apologies. So the one that is missing is CFE.

MS. BLOOMER: To be clear, it says -- you're looking at which paragraph?

MR. OXFORD: Six.

MS. BLOOMER: Six, OK. This is talking about held open LBI proprietary futures.

THE WITNESS: Yeah.

MS. BLOOMER: Open proprietary futures.

MR. OXFORD: I think that's enough coaching. Thank you.

MS. BLOOMER: Look, there is no secrets here. We are just trying to get the record right. That is all.

Q. So which proprietary futures account is missing from Exhibit 1?

A. Actually, can we just -- my six is proprietary only. The CFE, apologies, is the affiliates, just to make confirmation I've got that right.

It's me, I am confusing myself.

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JAMES

Apologies.

Q. OK. So I think our record is a little muddled now.

My question is, which are the nine different accounts that you reference in paragraph 6 of your declaration?

A. They are the ones in Exhibit I of my declaration.

Q. And there is nothing else?

A. No.

Q. You say in paragraph 7, "As of the closing, LBI maintained positive collateral balances in each of the LBI proprietary future accounts."

Do you see that?

A. Yup.

Q. What do you mean by positive collateral balances?

A. They weren't -- the accounts weren't in negative. They weren't overdrawn.

Q. Is that collateral a reference to margin?

A. The collateral is in reference to money that is held in the account or collateral TSG Reporting - Worldwide 877-702-9580

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that's -- securities that are in the account, cash that's in the account, that's collateral. So, i.e., the account is not overdrawn, they weren't in deficit.

Q. And that collateral may or may not be used as margin on the particular exchange at any given time?

A. Correct.

MS. BLOOMER: Objection, ambiguous.

Q. Now, how is it that you prepared Exhibit I? Withdrawn. Let me lay a foundation. Did you prepare Exhibit I?

A. Yes.

Q. How is it that you prepared that?

A. We jumped --

MS. BLOOMER: This is Exhibit I to her declaration, as opposed to E-1 that she was called here to testify about? Just to be sure. I don't want her to be confused. There is two different Exhibit I's.

MR. OXFORD: How many Exhibit I's does she have in front of her?

MS. BLOOMER: I'm not in front of her, so I don't see. I just want a clear record. TSG Reporting - Worldwide 877-702-9580

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She was called here to talk about an Exhibit E-1, and I don't want her to be confused as to which exhibit you are asking about.

A. Exhibit I was prepared by me.

Q. That's Exhibit I to your declaration?

A. Yes.

Q. How did you prepare it?

A. I took the broker statements from each of these brokers and took the balances from the accounts and put them on a spreadsheet.

Q. Exhibit I at the top has the legend "Undelivered Margin from Proprietary Futures Accounts Valued as of Closeout." Do you see that?

A. Correct.

Q. What do you mean valued as of account closeout?

A. So this is the value on the account after the positions had been closed.

Q. And is it fair to say that the positions were closed in different exchanges at different times?

A. Correct.

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Q. Do you have the underlying support for Exhibit I in your -- not in your possession today, but do you have it in your office?

A. Yes.

Q. Where did you get it from?

A. I got it from the operations staff.

Q. And the operations staff of whom?

A. Barclays. That were prior Lehman.

Q. When did you get it?

A. At the time of putting this together. So the beginning of the year, January, last year.

Q. So January of this year, or the end of last year?

A. January '09.

Q. Do you know when Barclays received those underlying exchange statements?

A. No. Sorry.

Q. Do you know who would know the answer to that question?

A. I'm assuming somebody in operations that they were sent to.

Q. Who in operations did you get them from?

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JAMES

A. I reached out to George Paraghain.

Q. How do you spell Paraghain?

A. P-A-R-A-G-H-A-M.

Q. And do those underlying account statements that you used to create Exhibit I, are those all once the exchange has closed out all of Lehman's proprietary future positions?

A. Let me just clarify something. Not all of the positions were closed by the exchange. Our Barclays traders had to close some of those positions.

Q. Understood.

A. Yeah.

Q. With that clarification in mind, do the account statements that underlie this exhibit all reflect the positions that Lehman held at these brokers or custodians once the accounts had been closed out?

MS. BLOOMER: Objection to the vague use of the words "positions" and "accounts."

A. Yes.

Q. Did those reports include any information about what of this collateral was held as margin?

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JAMES

MS. BLOOMER: Objection to the form.

A. I'm not sure what you --

Q. I'll ask a better question. I'll try to at least.

You described this as undelivered margin, correct?

A. Yes.

Q. This 457 million dollars that you have in Exhibit I you described as undelivered margin.

A. It's -- it's --

Q. Why do you describe it as margin?

A. It is the money that's sitting in the account at the brokers that has not come back.

Q. And do you know how much of it was used at margin -- as margin at the time of closing?

A. It would all be margin. That's what it is in the account.

Q. Do you know how much of the margin was excess to the minimum required by each exchange?

MS. BLOOMER: Objection to the form.

A. You need to clarify what you mean by "excess."

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Q. I am sorry, I thought I did.

Each exchange requires a certain minimum number, amount of margin for each position, correct?

A. Yes.

Q. And from time to time, Lehman would have margin that exceeds those requirements, correct?

A. Yes.

Q. Do the reports that you base this report on explain what the exchange minimum margin was and whether there was any excess margin beyond that?

A. No. But it -- we need to clarify -- no. And the -- when you -- margin and -- when you have money in an account, that is your margin account. OK? That can be more than the requirement for the initial margin for your current position, because a lot of these exchanges, you have to prefund your trading. So unless you have money in the account, you can't trade.

So margin is -- it is -- it is one of those clarifications between margin and excess.

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I'm just trying to -- I want to make sure that we are not --

Q. Are you able to tell me whether at the time of closing, these accounts contained margin that was in excess of the minimum required by each exchange? And I'm referring to the account and the broker custodian accounts referenced on Exhibit I to your declaration.

MS. BLOOMER: Objection to the form.

You are asking whether she can tell you that now or whether she knew that then?

MR. OXFORD: I am asking whether she can tell me now.

A. I would have to go and look.

Q. Do you know whether or not Barclays knew at the time of closing what -- sorry, whether these accounts included excess margin?

A. We had no idea.

Q. Why did you have no idea?

A. Because Lehman didn't either. Sorry.

Q. Can you explain that a little further?

A. When Barclays took over on September 22, we actually asked the Lehman operations people for a list of their positions

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and their brokers and their accounts, and they were not capable of giving it to us. And in fact, it took a fair number of days for us to get all the information that was required, because their books and records were in such a mess.

And in fact, the proprietary trades that were in these accounts we didn't even know were there for a couple of days, because they couldn't actually tell us that they were there.

Q. Do you know whether or not Barclays asked Lehman prior to the closing for information about its proprietary future trades?

A. I don't know.

Q. When did Barclays first learn about the margin that is reflected in Exhibit 1, the 457 million dollars?

A. When we first knew it was actually in -- the amount of money that was in the accounts or the amount of money that was in the accounts after the positions had been closed?

Q. Sorry. That's a good distinction.

When did -- I am sorry, withdrawn.

When did Barclays first learn that

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JAMES

Lehman had proprietary future accounts?

A. In the week following the 22nd.

Q. Do you know whether or not Barclays asked Lehman whether there were proprietary future accounts prior to closing?

A. I don't believe so. I don't know.

Q. And can you be more specific in terms of when Barclays first learned about these proprietary future accounts?

A. On September 22, once we had taken over, we requested information on all of the accounts. So the customers' accounts, the broker relationships, and what the positions were.

And between the 22nd and the -- which was the Monday, and the Thursday or the Friday, the operations guys actually kept coming up with new house positions that they didn't actually tell us on day one.

So on the 22nd, we were informed of -- and even though -- the VIX positions, which are not on this exhibit because they were for the affiliates. It slowly came to light that they had positions sitting in house accounts, over
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the course of that week.

Q. Who were the operations guys that you were getting this information from?

A. Mike Nielsen, who ran global operations for Lehman.

Q. Is he employed --

A. And people that work for him. And no, he is not still with...

Q. He is the same Mike Nielsen who was at the meeting on the 15th?

A. Correct.

Q. Do you know where he works today?

A. As I said earlier, I think he works for a charity.

Q. Sorry.

A. That's OK.

Q. Do you know which of these accounts were closed out by Barclays and which were closed out by the exchanges?

A. Not off the top of my head, no, because it was not something I personally did.

Q. Have you seen account statements from the brokers or custodians that reflect the margin requirements as of closing?

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JAMES

A. I have seen them, yes.

Q. How is it you came to see them?

A. In E -- the E-1 document -- the other, the one that was referred to in -- those statements were as of the time of the open positions. So would they have the numbers on? Yes. Did I look at them? No.

Q. Do you know whether or not those account statements were available to Lehman at the time of the closing?

A. I would hope so.

Q. Do those account statements, to your knowledge, break down the margin between the various forms in which margin might be held, such as cash or securities?

A. They should do, yes.

MR. OXFORD: And Trish, do you know if these have been produced to us?

MS. BLOOMER: Broker statements? I'll have to confirm that. I assume that they were produced, but I can't be sure, so I'll confirm and let you know.

MR. OXFORD: Thank you.

MS. BLOOMER: And you're talking about
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<p>1 JAMES</p> <p>2 the ones that were used -- the source</p> <p>3 documents that were used for the information</p> <p>4 on Exhibit E-2, and E-1. E1 or -- E1, I</p> <p>5 guess.</p> <p>6 THE WITNESS: E-1.</p> <p>7 MS. BLOOMER: Yeah.</p> <p>8 A. Can we just actually check that?</p> <p>9 Exhibit 1 or E-1?</p> <p>10 Q. I wasn't asking about any particular</p> <p>11 exhibit. I was asking about the --</p> <p>12 MS. BLOOMER: Materials that showed</p> <p>13 the open positions on the 19th. I have got</p> <p>14 it. I will take care of that.</p> <p>15 MR. OXFORD: Thank you.</p> <p>16 THE WITNESS: Sorry.</p> <p>17 Q. Were you involved in the closing out</p> <p>18 of these open positions, Ms. James?</p> <p>19 A. No.</p> <p>20 Q. Who was?</p> <p>21 A. It was Sean Byrne and Sean McKenna.</p> <p>22 MS. BLOOMER: I am sorry to interrupt.</p> <p>23 On the issue of these exhibits, just to</p> <p>24 clarify, these are pre-closing Lehman</p> <p>25 documents. So we are not producing</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 pre-closing Lehman documents. They are</p> <p>3 already available. That's my understanding.</p> <p>4 So I'm happy to refer them -- refer</p> <p>5 you to them, if I can. But just for the</p> <p>6 record, that's not among the documents we</p> <p>7 are producing.</p> <p>8 MR. OXFORD: Well, we can have a</p> <p>9 discussion at a break, Trish, but to the</p> <p>10 extent these were in Barclays' possession, I</p> <p>11 think we have a good reason to request them.</p> <p>12 MS. BLOOMER: They were not in</p> <p>13 Barclays' possession at the time zone that</p> <p>14 you were asking for documents.</p> <p>15 MR. OXFORD: OK.</p> <p>16 Q. Ms. James, you will see on the last</p> <p>17 sentence of paragraph 8, it says, "On completion</p> <p>18 of the closeout process, the value of the</p> <p>19 remaining LBI proprietary futures collateral,</p> <p>20 according to broker statements reflecting the</p> <p>21 value in these accounts after all positions were</p> <p>22 closed out, was approximately 457,205" -- sorry,</p> <p>23 "\$457,205,950."</p> <p>24 A. Yes.</p> <p>25 Q. That's the total that you reflect on</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Exhibit 1 there?</p> <p>3 A. Correct.</p> <p>4 Q. Now, were you involved in making that</p> <p>5 calculation? Did you -- withdrawn.</p> <p>6 Do you know what the cost was of</p> <p>7 closing out those positions?</p> <p>8 A. What do you mean by cost? Can we</p> <p>9 just --</p> <p>10 Q. Well, the account statements as of</p> <p>11 September 19 for the accounts reflected in</p> <p>12 Exhibit 1 presumably have a number higher than</p> <p>13 457 million; is that correct?</p> <p>14 A. I don't know. I would have to look.</p> <p>15 Q. Do you know whether or not there were</p> <p>16 open positions within those accounts?</p> <p>17 A. These accounts are the ones that had</p> <p>18 open positions. So they all had open positions</p> <p>19 as of the time we took over on September 22.</p> <p>20 Q. Have you had any involvement in</p> <p>21 calculating the value of those open positions?</p> <p>22 And let's go back to our original definitions of</p> <p>23 open trade equity.</p> <p>24 MS. BLOOMER: Can you repeat the</p> <p>25 question. I am sorry.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 MR. OXFORD: Sure.</p> <p>3 Q. Did you have any involvement in</p> <p>4 calculating the open trade equity value of the</p> <p>5 positions in the accounts reflected on</p> <p>6 Exhibit 1?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A. I'm not -- I'm not sure --</p> <p>9 Exhibit 1 -- and this is just why I need some</p> <p>10 clarification, please. Exhibit 1 is after the</p> <p>11 trades have been closed. So there is no open</p> <p>12 trade equity.</p> <p>13 Q. Right, I understand that. But I don't</p> <p>14 have an Exhibit 1 that is pre-closing.</p> <p>15 A. No. I wouldn't have calculated the</p> <p>16 numbers. The numbers would come from the broker</p> <p>17 statements and Lehman's books and records.</p> <p>18 MR. MAGUIRE: Can we take a short</p> <p>19 break?</p> <p>20 MR. OXFORD: Sure.</p> <p>21 (Recess)</p> <p>22 BY MR. OXFORD:</p> <p>23 Q. Ms. James, could you have in front of</p> <p>24 you Exhibit 534, please.</p> <p>25 MS. BLOOMER: 534-A?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 MR. OXFORD: 534-A. Yes, thank you.
3 Q. And can you turn to -- unfortunately
4 the pages are not numbered, but to the eighth
5 page of that document, please.

6 And just for the record, the last line
7 says, "For the basis of Barclays' claims to the
8 positions."

9 A. What is this one?

10 Q. It says, "For the basis of Barclays'
11 claims to the positions," at the bottom.

12 MS. BLOOMER: I don't see that.

13 THE WITNESS: This one.

14 MS. BLOOMER: Just for clarification,
15 whose handwritten notes are on these?

16 MR. OXFORD: I'll identify this for
17 the record. These are not -- they're not
18 handwritten notes. They're typewritten
19 notes of Gary Romain that were marked at his
20 deposition yesterday.

21 THE WITNESS: Oh, OK.

22 MS. BLOOMER: Whose notes are on it?
23 There are handwritten notes on it.

24 MR. OXFORD: There are?

25 MS. BLOOMER: On this there are.

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1 JAMES
2 trade value of the proprietary positions on
3 foreign exchanges and certain non-OCC cleared
4 domestic exchanges as of closing being
5 approximately negative 13 million.

6 Did you have any involvement in
7 calculating that figure?

8 A. No.

9 Q. Do you know who did?

10 A. I would assume Gary.

11 Q. You might be surprised.

12 If you wanted to go about calculating
13 the open trade, the net or the total open trade
14 equity of proprietary positions in the accounts
15 listed on Exhibit 1 to your declaration, how
16 would you go about doing that?

17 MS. BLOOMER: Objection. You're
18 asking her how she would value the open
19 trade equity?

20 MR. OXFORD: Yeah.

21 MS. BLOOMER: From a finance
22 perspective?

23 MR. OXFORD: I am asking her how she
24 would value it.

25 MS. BLOOMER: Thank you.

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1 JAMES
2 MR. OXFORD: That looks like
3 Mr. Maguire's handwriting, but I'll confirm.

4 MS. BLOOMER: There are a couple of
5 notes throughout.

6 MR. OXFORD: I would think that is
7 Mr. Romain's actually, but let me clarify
8 when we go off the record.

9 MS. BLOOMER: You won't be asking any
10 questions about that?

11 MR. OXFORD: I am not asking questions
12 about those.

13 MS. BLOOMER: OK.

14 Q. Have you seen this document before,
15 Ms. James?

16 A. No, sorry.

17 Q. If you could take a moment to look at
18 the last paragraph on page 8 that begins, "The
19 open traded valuc." Do you see that paragraph?

20 A. Yup.

21 Q. If you could read that to yourself and
22 let me know when you're done.

23 A. OK.

24 Q. You will see that Mr. Romain's notes
25 in the first sentence there talk about the open

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1 JAMES
2 A. Can I ask, it would depend on the --
3 what is still open? So if the position was
4 open?

5 Q. Yeah.

6 A. I would look at the price of the trade
7 versus the closing price of the day that you're
8 choosing to value it against, because the whole
9 time the trade is open, it is going to move
10 every day based on the closing price.

11 Q. Where would you get that information
12 from?

13 A. I would either -- depending on -- if
14 we are talking specifically to these positions,
15 I would either ask Lehman operations for their
16 positions or I would look at the broker
17 statements. One or the other.

18 So either Lehman books and records or
19 the broker statements, depending on what you
20 could get.

21 Q. Would you be able to tell from --
22 let's take the broker's statement -- what was
23 the net open trade equity of positions in a
24 particular account fairly easily?

25 MS. BLOOMER: I am going to object to
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<p>1 JAMES</p> <p>2 the form of the question and the foundation.</p> <p>3 I think you had asked her whether she had</p> <p>4 any involvement in this and she said she</p> <p>5 didn't, so I want to be clear about the</p> <p>6 foundation of this question.</p> <p>7 MR. OXFORD: I think it is clear. I'm</p> <p>8 asking her -- I have asked that question,</p> <p>9 and that's been answered, and now I am</p> <p>10 asking a different question.</p> <p>11 Q. Which is, if you wanted to calculate</p> <p>12 the net or total open traded value on a</p> <p>13 particular account or set of accounts, how would</p> <p>14 you go about doing that?</p> <p>15 A. The open trade equity? Yeah, just --</p> <p>16 I would most likely look at the Lehman books and</p> <p>17 records to see their original trade price and</p> <p>18 the closing price of the day that we are trying</p> <p>19 to get the open trade equity value to, because</p> <p>20 it moves every day.</p> <p>21 Q. Would that be a difficult calculation</p> <p>22 for you to perform?</p> <p>23 A. It depends on the amount of open</p> <p>24 positions and the products.</p> <p>25 Q. Why does it depend on those two</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 variables?</p> <p>3 A. Every futures product has a different</p> <p>4 value associated and a different tick size</p> <p>5 associated with it, so you have got to know each</p> <p>6 product specifically to actually do that</p> <p>7 calculation.</p> <p>8 Q. Is the information that you need to do</p> <p>9 that calculation typically contained within the</p> <p>10 broker's report?</p> <p>11 A. No.</p> <p>12 Q. Where is that information typically</p> <p>13 contained?</p> <p>14 A. On the exchange's website, will give</p> <p>15 you the core specifications of the product.</p> <p>16 Q. How would you go about determining the</p> <p>17 total value in Lehman proprietary futures</p> <p>18 accounts that are reflected on Exhibit 1 to your</p> <p>19 declaration?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 A. What -- what we did, which I said</p> <p>22 earlier, is I took the broker's statements and</p> <p>23 took the balances after all the positions had</p> <p>24 been closed, and that's the number on Exhibit 1.</p> <p>25 Q. And if you wanted to do that at the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 end of the day on September 19, 2008, how would</p> <p>3 you have gone about that?</p> <p>4 MS. BLOOMER: Objection to form.</p> <p>5 A. It would be the same process. I</p> <p>6 wouldn't be doing a calculation. That's --</p> <p>7 that's why I am getting confused. Sorry.</p> <p>8 Q. So all you would need would be the</p> <p>9 broker's statement that would tell you the net</p> <p>10 value of the open positions, correct?</p> <p>11 MS. BLOOMER: Objection to form.</p> <p>12 A. You mean the total equity? Yes. But</p> <p>13 does that necessarily tie back to Lehman's books</p> <p>14 and records? No.</p> <p>15 Q. I understand. Independent of Lehman's</p> <p>16 books and records, if you wanted to know on</p> <p>17 September 19, 2008, what the total equity value</p> <p>18 of the open trades were on a particular account,</p> <p>19 you would look simply to the broker's statement.</p> <p>20 MS. BLOOMER: Objection to the form.</p> <p>21 A. Yes.</p> <p>22 Q. Would that broker's statement also</p> <p>23 explain to you how much collateral was posted to</p> <p>24 that particular account?</p> <p>25 MS. BLOOMER: Objection to the form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Are you talking about broker's statements</p> <p>3 that they didn't have at the time? Is that</p> <p>4 what you are asking her about?</p> <p>5 MR. OXFORD: I am asking how -- I</p> <p>6 think my question is very clear.</p> <p>7 MS. BLOOMER: How she would do it on</p> <p>8 the 19th, when she didn't have the</p> <p>9 statements? Is that your question?</p> <p>10 MR. OXFORD: I don't whether she had</p> <p>11 the statements or not.</p> <p>12 MS. BLOOMER: Maybe you should ask her</p> <p>13 that to set a foundation.</p> <p>14 BY MR. OXFORD:</p> <p>15 Q. I think it is pretty clear, my</p> <p>16 question, but let's back up.</p> <p>17 If you wanted on September 19, 2008,</p> <p>18 to calculate the total value or equity in the</p> <p>19 proprietary futures accounts reflected on</p> <p>20 Exhibit 1, how would you go about doing that?</p> <p>21 A. As of September 19, we weren't</p> <p>22 entitled to, so -- but I would have had to</p> <p>23 request the broker statements, and I would look</p> <p>24 at the information in the broker's statements.</p> <p>25 Q. If you looked at the information in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

the broker statements, would you be able to answer that question about the total value or net equity of the open positions in that account?

MS. BLOOMER: Objection to the form.

A. Yes. I could point out the open trade equity number on those statements, yes.

Q. And I think you testified before, but I just want to be clear, you could also identify from those statements how much collateral or margin was posted against those open trades? Correct?

MS. BLOOMER: Objection to the form. Mischaracterizes.

A. Can we just clarify, you'd want to know what the actual requirement from the broker was for those positions?

Q. That's my next question.

A. Oh. Then I don't understand the first one, sorry.

Q. You have told me that in order to calculate the total open trade equity of a set of positions in a particular account, and we are discussing this in the context of the TSG Reporting - Worldwide 877-702-9580

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proprietary futures accounts that are reflected on Exhibit I to your declaration, you would look at the broker's statement and that would tell you the answer to that question, correct?

A. Correct.

Q. Would that same broker's statement also tell you how much margin was required by the broker or the exchange to be posted as against those positions?

A. It should do. And I -- that's why I am saying it should.

Q. And would those broker statements that you have just testified about typically reflect whether or not there was excess margin or collateral posted over and above the minimum requirements by that exchange or clearing house?

A. Can we just clarify what you mean by excess here? Because I have a problem with the word "excess," I'll be very honest. Because "excess" kind of gives the impression that it is, you know, free money, and it is really not. Let's be honest about this.

So that's why I want to clarify when you use "excess," "excess" in the futures world TSG Reporting - Worldwide 877-702-9580

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is a very different word to what's used in the rest of the world. So I want to clarify, what do you mean by "excess"?

Q. I mean more than -- well, withdrawn.

Would the broker reports that you would look to, to calculate or to show you what the total open equity positions were, would those same broker reports show you the margin required by that exchange?

A. They should do, and the reason I am saying they should is because certain of the brokers that they used, it does not, which is why I am...

Q. And would those same statements typically show the amount of collateral that was posted in addition to the amount of collateral that was required by that exchange?

MS. BLOOMER: Objection to the form.

At the time -- at the snapshot of the broker's statement or -- I mean, I don't think the question is clear about what time you're talking about a requirement.

Q. I'm talking about at any given date, but particularly September 19, 2008.

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JAMES

A. But I can't talk to September 19. That's -- that's my problem.

Q. I understand. I'm not asking you -- Ms. James, I'm not asking you what you did. I understand your testimony that you were not involved in any such due diligence.

A. Right.

Q. I am asking you if you had to answer this question, how would you go about doing it? Does that help you answer the question?

A. OK. And this is why I want to clarify "excess," because the problem is, people have the habit of using the word "excess" as though it is something that shouldn't be there. OK. Which is not the case in the futures world.

What you need to understand with the way the futures account works, the money that's held on your futures account is there to secure your trading in that environment. Yup. So you will have your open trade equity value that moves every single day. You will have cash on the account that you have put up to cover that open trade equity, OK. You will have an initial margin requirement that has been calculated TSG Reporting - Worldwide 877-702-9580

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1 JAMES
2 based on the position you have open at that
3 time.
4 And then there may or may not be --
5 and then you'll get what we call your excess
6 deficit. OK? Which is known in the futures
7 world as period, this is the money that is above
8 and beyond what is required for this particular
9 day's trading. OK?

10 That money can also be used or is also
11 used to fund your intraday margin calls, which
12 of course you don't know what they are at the
13 time, and also on certain exchanges your
14 prefunding. So in most of the Asian exchanges,
15 you have to prefund. So if you want to trade,
16 unless you have got money or collateral
17 securities in the account, you cannot trade.

18 Which is why the word "excess" is a
19 bit -- that's why I have a problem with it,
20 sorry, because people assume "excess" is
21 something that somebody could have taken away,
22 and that's actually not the case.

23 Q. I appreciate that answer. That clears
24 up a lot for me. Thank you.

25 A. So yes, if somebody said to me -- yes,
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1 JAMES
2 value, we have been talking about the open trade
3 equity to the value of the open positions.
4 There is no open positions, there is no value.

5 Q. Right. Maybe I can --

6 A. Sorry.

7 Q. Let's go back. Let's go back to
8 Exhibit 1, because I think we are getting close
9 here.

10 In the accounts reflected in
11 Exhibit 1, there were open positions that Lehman
12 held as of the 19th of September, 2008, correct?

13 A. Yes.

14 Q. And there was also margin?

15 A. Yup.

16 Q. And you have told me that you think
17 you would be able to tell me by looking at the
18 broker statements, with some exceptions, what
19 the value of those open positions was at the
20 close of a particular date.

21 MS. BLOOMER: Objection to form.

22 Q. How then would you calculate --
23 withdrawn.

24 You have also told me those broker
25 statements would include how much margin or
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1 JAMES
2 I would look at the broker's statements and
3 hopefully get all the information that's
4 required.

5 Q. And if in this example, Lehman were to
6 have closed out at the end of the day on the
7 19th of September their proprietary futures
8 positions, would you be -- by looking at those
9 statements, be able to tell how much equity or
10 value would be returned to Lehman?

11 MS. BLOOMER: Objection to form. And
12 foundation.

13 A. I just want to double check. If I
14 looked at a broker statement that Lehman had,
15 they have closed the positions, what the value
16 was? No.

17 Q. Why is that?

18 A. Because all I can tell you is the
19 balance in the account.

20 Q. And why are you not able to tell me
21 the value that would return to Lehman if those
22 positions were closed out?

23 A. Well, can we just clarify what you
24 mean by "value"? Because perhaps -- to me, with
25 all the conversations we have had earlier,
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1 JAMES
2 collateral was posted against those positions,
3 right?

4 A. It should do, yes.

5 Q. And also how much margin was required
6 against those positions on -- by the exchange.

7 MS. BLOOMER: Objection to the form.

8 Mischaracterizes the testimony.

9 Q. Correct?

10 A. It should do. Yes.

11 Q. And then if Lehman were on Monday
12 morning, when the exchange is opened, to
13 liquidate those trades, does the broker
14 statement that you have been talking about tell
15 you how much value would return to Lehman?

16 MS. BLOOMER: After the liquidation?

17 MR. OXFORD: Yes.

18 A. It would give you the total amount in
19 the account that they could remove. Exactly the
20 same as my Exhibit 1.

21 Q. I see.

22 MR. OXFORD: Now might be a good time
23 for a lunch break.

24 MS. BLOOMER: OK.

25 (Luncheon recess; 12:25 p.m.)
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<p>Page 102</p> <p>1 JAMES</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>Page 103</p> <p>1 JAMES</p> <p>2 AFTERNOON SESSION</p> <p>3 1:21 p.m.</p> <p>4 THE WITNESS: I wanted to go back and</p> <p>5 clarify something. When we were talking</p> <p>6 before the break about the closeouts and</p> <p>7 looking at the statement and the value, and</p> <p>8 I had to go back and read the question,</p> <p>9 sorry, I've muddled the two together, yeah,</p> <p>10 because the question was, can you tell from</p> <p>11 the statement the value of the positions,</p> <p>12 which is correct, you can.</p> <p>13 But can you tell the value of those</p> <p>14 positions prior to them being liquidated?</p> <p>15 No, you can't, which is what I just want to</p> <p>16 clarify.</p> <p>17 So can you look at a statement and</p> <p>18 tell what its value is going to be? No.</p> <p>19 BY MR. OXFORD:</p> <p>20 Q. What would you have to look at to</p> <p>21 determine the -- what the value of those</p> <p>22 positions are going to be?</p> <p>23 A. Well, you can't. I don't have a</p> <p>24 crystal ball. Because the problem is, you don't</p> <p>25 know what price you are going to close out at.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p>Page 104</p> <p>1 JAMES</p> <p>2 And that's why I wanted to go back and double</p> <p>3 check what was said again, because you said can</p> <p>4 you tell from the broker's statement, and then</p> <p>5 they close them, and I thought it was the other</p> <p>6 way around.</p> <p>7 So I thought we said can you tell from</p> <p>8 a broker's statement after you have closed them,</p> <p>9 yes. Can you tell before they have closed them,</p> <p>10 no. All you can tell is the value as of last</p> <p>11 night. But you can't tell what the value of</p> <p>12 that closeout is until you physically close it</p> <p>13 in the market.</p> <p>14 Q. Because the market will move?</p> <p>15 A. The positions are going to move. It</p> <p>16 is a volatile -- which it was at that time. It</p> <p>17 is moving around all over the place. So you</p> <p>18 can't -- and I thought we meant -- yes, you can</p> <p>19 look at the statement after they have been</p> <p>20 closed. You can't look at the statement before</p> <p>21 they have been closed. Does that --</p> <p>22 Q. I think I --</p> <p>23 A. Sorry.</p> <p>24 Q. I think I understand your</p> <p>25 clarification.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>Page 105</p> <p>1 JAMES</p> <p>2 If you were to look at the broker's</p> <p>3 statements that you testified to just before</p> <p>4 lunch --</p> <p>5 A. Yeah.</p> <p>6 MS. BLOOMER: These are the statements</p> <p>7 on the 19th.</p> <p>8 Q. The statements on the 19th. You would</p> <p>9 be able to tell the total open equity positions</p> <p>10 in that account, correct?</p> <p>11 A. Yes. As of close of business of the</p> <p>12 19th.</p> <p>13 Q. And you would also know the exchange</p> <p>14 minimum margin that the exchange requires as</p> <p>15 against those positions, correct?</p> <p>16 A. As of close of business on the 19th,</p> <p>17 correct.</p> <p>18 Q. And you would also know the total</p> <p>19 collateral posted against those exchange minimum</p> <p>20 margin requirements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. So you would know whether there was</p> <p>23 more or less collateral than the exchange</p> <p>24 minimum margin with, in fact, the close of</p> <p>25 business on the 19th?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

A. Yes.

MS. BLOOMER: This is a hypothetical question.

MR. OXFORD: Right.

Q. What's the purpose, to your understanding, of the exchange minimum margin?

MS. BLOOMER: Object to the form. Foundation.

A. What do you mean, purpose? What --

Q. Why does an exchange require you to post exchange minimum margin?

MS. BLOOMER: Objection, foundation.

A. Just to make sure I have got this right, you want to know why the exchanges have initial margin requirements, right?

Q. Correct.

A. Just to make sure we are on the same page. The exchanges set initial margin requirements to actually protect themselves. So they have an initial margin requirement which they will call from you, OK, at the end of day.

They then do the intraday, which is the middle of the day call that they do, which is based on the same. It is the way the

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exchange protects themselves to make sure that they have always got enough money to pay the opposite side of the trade.

The issue is, if the market moves -- sorry, just to give you -- if the market moves, yeah, and it moves outside of that range of what you have got, you are no longer protected, and neither is the exchange.

Q. And in that situation, Ms. James, the exchange would typically require additional margin to be posted, correct?

A. Correct, yes.

Q. Going back to our example that we were discussing before lunch of where you would be looking at exchange statements as of close of business on the 19th.

MS. BLOOMER: Objection, "would be." I just -- object to the form of the question.

Q. When would the exchange typically calculate the margin after the markets close on the Friday, the 19th?

MS. BLOOMER: Objection, foundation.

Q. Let's use the OCC as an example.
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A. OK. Sorry. A little different.

MS. BLOOMER: Objection, foundation.

A. It is normally done at the end of trading. Trading will close, they will then pull in closing prices and the volatility of the day, and then they would generate what they use for calculating the initial margin requirement. Then they would generate the initial margin requirement, and depending -- and if it is the OCC, that's available at around, I think it's about 1 or 2 o'clock the following morning.

Q. So for a Friday market close, the calculation by the exchange, in this case the OCC, is typically done after the close based on that day's closing prices, and the initial margin is calculated in the OCC's case and communicated to the member sometime 1 a.m., 2 a.m., Saturday morning?

A. Yes.

MS. BLOOMER: Objection to the form, and to the vagueness of the time period.

Q. So by Saturday morning, Lehman would know what the initial margin requirement was for its positions firm and customer at the OCC,

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correct?

MS. BLOOMER: Objection, foundation.

A. I will answer that, but I'm actually going to give you -- it is something that we have actually got in response to the questions, OK. The exchange will put out what their number is, OK. Lehman should also have calculated their own number, yeah. So you have to do that reconciliation between what the exchange says and what your own books and records say.

So should they know? Yes, they should. Did they know? I don't know.

Q. I understand.

A. Because from their books and records, I would have had a tough time.

Q. Would you have been able to tell the OCC margin requirements on, say, Saturday, the 20th of September, by looking at a report dated Sunday, the 21st of September, from the OCC?

MS. BLOOMER: Objection.

A. Hang on, I just -- the exchange only puts out one set of reports, unless it is an option expiring weekend, and I know that wasn't your question, but -- so the reports would be
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<p>1 JAMES 2 for the 19th trading. It would be the same 3 reports on the Saturday and the Sunday. 4 Q. I see. So if you on Sunday looked at 5 a report that has Friday's close prices, that 6 would be delivered sometime in the wee hours 7 Friday night, Saturday morning, you would be 8 able to tell what the, in this case the OCC's 9 margin requirements were, correct? 10 MS. BLOOMER: Objection to form. 11 A. You can tell what the OCC states the 12 number to be. 13 Q. Right. I understand an individual 14 participant may have a different view and may be 15 able to negotiate that with the OCC. 16 A. Well -- 17 Q. May have a different view than the OCC 18 on that margin requirement. 19 MS. BLOOMER: Objection. Is that a 20 question, what you understand? 21 Q. Is that correct? 22 A. Hang on, wait a minute. 23 Q. Withdrawn. It is not -- it is not 24 material. 25 Just to round out this set of TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 questions, Ms. James, you told me a few minutes 3 ago that the purpose of the margin was to make 4 sure that the exchange has enough money to pay 5 the opposite side of the trade. 6 MS. BLOOMER: Objection. 7 Mischaracterizes the testimony. 8 Q. Is that what you said? 9 A. At -- 10 Q. Is that a -- is that a fair 11 characterization of what you said, if not word 12 for word? 13 A. Can we go back and check, that's 14 exactly what I said? 15 MS. BLOOMER: Do you want her to 16 confirm that it is word for word what she 17 said? 18 MR. OXFORD: I'm just trying to lay 19 the foundation. 20 MS. BLOOMER: Fair enough. 21 You can answer the question to the 22 best that you can. 23 A. I think that's -- I would have to go 24 back and check exactly what I said. I don't 25 remember word for word, I'll be honest. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 Q. So in our example, on Monday morning, 3 before the markets open, the OCC would have set 4 the margin so that they would have enough money 5 to pay the opposite side of the trade in what 6 eventuality? 7 MS. BLOOMER: Objection to form. 8 A. In -- what do you mean, in -- 9 Q. Why does the exchange need to have 10 margin so that they know they have enough money 11 to pay the other side of the trade? 12 MS. BLOOMER: Objection to form. 13 Q. Is it in case of default by the 14 member? 15 A. It is default by the member, but it's 16 also the volatility of the trading that's going 17 to occur that day. So the initial margin is 18 there. OK. And the initial margin is normally 19 based on a certain amount of movement in the 20 market during the trading day. OK. So -- and 21 this may be more detail than you need. 22 They have what they call limit up and 23 limit down, and based on how much the market 24 moves up or the market moves down, it is never 25 more than the range of that initial margin. If TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 it is, they end up halting trading and calling 3 more initial margin. 4 Now, because of the volatility at that 5 time in the markets in the two, three weeks 6 before and the three, four weeks after, let's be 7 honest about this, it was a constant move on 8 that initial margin requirement and what was 9 being called. 10 So yes, on the morning, there would 11 have been initial margin requirement, and I'm 12 pretty sure there was another call at intraday, 13 another call in the afternoon. There was a 14 constant moving target. 15 Q. Do you know whether or not when 16 Barclays started trading Lehman's positions, 17 customer and firm, for options and futures on 18 September 22 of 2008, do you know whether there 19 in fact was an additional margin call made by 20 any exchange? 21 A. You said traded customers' positions. 22 You don't trade -- that's what you -- 23 Q. Sorry. 24 A. Sorry. I just -- customers trade for 25 themselves. TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

Q. Right.

A. I don't know. I would have to go back and check.

Q. Looking at the OCC statements, for example, to continue that example, that reflect Friday night's close, the 19th.

MS. BLOOMER: Which statement in your question reflects Friday night's close? What statement are you talking about in your question?

MR. OXFORD: We can look at a specific statement this afternoon, but I'm trying to understand the subject generally.

MS. BLOOMER: OK. I just want to be sure that she understands the question.

Q. It is your testimony, if I am understanding you properly, you would be able to tell on Monday morning what the open equity positions were in any particular account, correct?

A. As of close of business of the 19th, yes.

Q. Correct.

So when the markets open at 8 a.m. or
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at least, say, one minute before the markets open, 7:59 a.m., would you know what the open equity positions were, correct?

A. Yes.

Q. And you would know this just by looking at the OCC statement?

A. You know the net, yes.

Q. Right. You --

A. You don't know an individual customer's position.

Q. It is not a spreadsheet of thousands and thousands of pages, correct?

A. No. It is the net number the OCC is calling that member.

Q. And again, just so we are clear, looking at that report, you would know the exchange minimum margin that the OCC has requested or requires?

A. Yes.

MS. BLOOMER: Objection to form.

Q. Correct?

A. Yes.

Q. And you would know whether or not there was collateral posted that was greater
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JAMES

than that minimum requirement, correct?

A. Yes.

Q. Would you use that report, Ms. James, to assess the risk inherent in holding those positions?

A. No.

MS. BLOOMER: Objection to form.

Would she or did she?

Q. I think it is would.

A. No.

Q. Why not?

A. Because it doesn't give you the details of the trade. Without the details of the trades, you have got no idea.

Q. Looking at the OCC's statement before the markets open on September 22, would you be able to assess the risk in assuming those positions -- withdrawn.

Looking at the OCC statement on the morning of September 22, before the markets opened, that reflects the Friday night prices and the Friday night margin based on those prices, would you be able to assess the risk inherent in taking on those positions if the

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intention was to liquidate those positions immediately?

A. No.

Q. Why not?

A. Because the OCC reports don't give you the detail of the transactions.

Q. If you liquidated all the positions held at the OCC on Monday morning, as soon as the markets opened, what would happen? Would the margin be applied to those positions?

A. Yes. But we need to -- the issue is, if you were going to close those positions on the Monday morning, OK, you have to know what those positions are. You have to know exactly -- and I'm assuming we are talking more about the OCC options here, rather than the futures.

You have got to know those positions, you have got to know the history and the volatility of that product, and you have got to look at where it stands and what's the volatility behind it and whether you're looking at a balanced portfolio or a nonbalanced portfolio.

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<p>1 JAMES</p> <p>2 So to just say I'm going to close out</p> <p>3 all these positions on a Monday morning would</p> <p>4 not be the smartest move to do, let's be honest</p> <p>5 about this. And plus, you don't know what price</p> <p>6 you're going to get if you went into the market</p> <p>7 and closed them out.</p> <p>8 The OCC position that Lehman had was a</p> <p>9 fairly large substantial position, as I've now</p> <p>10 seen it, OK. If you had gone into the market on</p> <p>11 Monday morning and closed all of those positions</p> <p>12 out, there would have been absolute havoc in the</p> <p>13 market.</p> <p>14 Q. Why would there have been havoc in the</p> <p>15 market?</p> <p>16 A. Because of the size of the positions</p> <p>17 that you're attempting to close out. Yeah. So</p> <p>18 the volume of the positions, the risk</p> <p>19 associated. You would have moved the market</p> <p>20 price substantially if you had attempted to</p> <p>21 close all of those positions in one go. The</p> <p>22 risk associated with that is just -- I wouldn't</p> <p>23 even want to go there.</p> <p>24 Would there have been enough margin to</p> <p>25 cover? Yeah, I'm not convinced there would have</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 been.</p> <p>3 Q. Why not?</p> <p>4 A. Due to the size of their positions</p> <p>5 they had on. And, you know, actually in the</p> <p>6 deposition of, I think it was Craig Jones --</p> <p>7 MS. BLOOMER: Declaration?</p> <p>8 A. Declaration, I'm sorry. I muddle the</p> <p>9 two together.</p> <p>10 The Craig Jones who is the Treasury</p> <p>11 guy for the OCC, it actually states, the OCC</p> <p>12 actually would not allow Lehman to take back</p> <p>13 money on the Friday. They gave them -- they</p> <p>14 gave them an extra call, margin call on Friday</p> <p>15 due to the positions they had on and the</p> <p>16 volatility in the market.</p> <p>17 Q. When did Barclays first learn that?</p> <p>18 A. When did we learn --</p> <p>19 Q. About the additional margin call that</p> <p>20 you were just talking about.</p> <p>21 A. I don't know when Barclays learned</p> <p>22 about it. I only learned about it from actually</p> <p>23 Craig's declaration. Because that would have</p> <p>24 been proprietary information to Lehman.</p> <p>25 Q. In your experience, Ms. James, is that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 a typical way for -- withdrawn.</p> <p>3 How typically are margin calls made in</p> <p>4 or at the OCC?</p> <p>5 MS. BLOOMER: Objection, foundation.</p> <p>6 A. Daily.</p> <p>7 Q. How are they communicated to the</p> <p>8 member?</p> <p>9 A. It depends on how the member wishes to</p> <p>10 have them. The OCC has an online system that</p> <p>11 you can actually go on and look the number up.</p> <p>12 They will sometimes call you and sometimes they</p> <p>13 will do it by e-mail.</p> <p>14 I don't know Lehman's process.</p> <p>15 Q. In terms of the OCC, if the OCC makes</p> <p>16 an additional margin call intraday, do you have</p> <p>17 any understanding as to whether or not that is</p> <p>18 reflected in the OCC's books and records?</p> <p>19 A. I'm actually not sure, I'll be honest.</p> <p>20 I don't know.</p> <p>21 Q. So you don't know -- if you got a</p> <p>22 margin call during the day, you don't know</p> <p>23 whether or not by the end of the day Lehman -- I</p> <p>24 am sorry, the OCC's books and records will be</p> <p>25 updated to reflect that?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 A. They will be updated to reflect the</p> <p>3 money if you had to wire more money in or if you</p> <p>4 had to put in more securities. But if it was</p> <p>5 money that was already there that they are not</p> <p>6 allowing you to take out, then it hasn't</p> <p>7 changed. So it depends on --</p> <p>8 Q. Well, I'm not sure I quite understand</p> <p>9 that. I thought you said there was an</p> <p>10 additional margin call made to Lehman on Friday,</p> <p>11 the 19th of September?</p> <p>12 A. Right. And if you read Craig's</p> <p>13 declaration, what he says is, they went to</p> <p>14 withdraw money on Friday from the OCC, which was</p> <p>15 a requirement above and beyond the initial</p> <p>16 requirement they had there, so they chose to</p> <p>17 pull it back into their normal, regular bank</p> <p>18 account, I'm assuming to satisfy other</p> <p>19 requirements.</p> <p>20 When they called that money back, the</p> <p>21 OCC said no, and the OCC said no, we are keeping</p> <p>22 that money as an additional requirement.</p> <p>23 Q. And would you expect the OCC to update</p> <p>24 their books and records to reflect that?</p> <p>25 MS. BLOOMER: Objection, foundation.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 A. No. No, because they haven't changed
3 anything. There is nothing for the OCC to
4 reflect.
5 Q. I understand that you are not an OCC
6 expert. It is -- futures is your area of
7 expertise, not the OCC.
8 Have you ever heard of a margin call
9 being made in the manner that you have just
10 described?
11 A. Yes.
12 Q. Under what circumstances?
13 A. Normally very extreme, volatile
14 markets.
15 Q. That's happened to you in your tenure
16 at Barclays?
17 A. No. Previous company.
18 Q. Where did it happen?
19 A. ABN AMRO.
20 Q. And that's prior to your employment
21 with Barclays that began in 2001?
22 A. Yup.
23 Q. Can you give me a year of when this
24 call happened?
25 A. Year 2000.
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1 JAMES
2 open equity in that account, can you tell me how
3 you would go about that?
4 MS. BLOOMER: Objection, vague as to
5 time frame.
6 A. Are we talking as of the day we took
7 over? So September 22?
8 Q. My question is not particularly
9 bounded by time, but you can pick that day if
10 you like if that's helpful.
11 A. So we would have taken the positions
12 in the account, identified what the positions
13 were, the prices that they were originally
14 traded at and marked them versus the closing
15 price on the day that we are looking to mark
16 them to and that would give you the current
17 value for that day.
18 Q. And if you wanted to figure out the
19 total open equity as of Monday morning before
20 the markets close on the 22nd of September, how
21 would you do that? Would that change your
22 answer?
23 MS. BLOOMER: Objection.
24 A. Yeah.
25 Q. OK, can you tell me under that
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1 JAMES
2 Q. Could we return to your declaration,
3 which is 535-A.
4 A. Yup.
5 Q. Could you turn to page or paragraph 9.
6 MS. BLOOMER: Can we just pause for
7 one minute so I can run back and get my
8 copies of this exhibit.
9 MR. OXFORD: Yeah, sure.
10 MS. BLOOMER: Thanks.
11 (Recess)
12 Q. Ms. James, you have your declaration
13 in front of you?
14 A. I do, yeah.
15 Q. Looking at paragraph 9, you see that
16 it says as of closing, LBI held in open -- LBI
17 held open LBI futures in account number 084F at
18 the OCC. Do you see that?
19 A. Yes.
20 Q. And do you know, sitting here today,
21 what the total open equity was in that account?
22 A. No.
23 Q. Have you ever known that answer?
24 A. No, I don't think I have.
25 Q. If you were to calculate the total
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1 JAMES
2 scenario you would go about determining that?
3 A. Well, what you would have to do is
4 take the trades that you have on. You are then
5 going to have to go look at a screen, a trading
6 screen to see where is the current value which
7 of course is constantly moving and try and
8 price.
9 Q. I don't mean to interrupt. My
10 question was before the markets open on Monday
11 morning.
12 A. Sorry, then it would be -- you can
13 only value it based on the closing price of the
14 previous night.
15 Q. That closing price, if I understand
16 your previous testimony correctly, would be
17 available in a summary OCC report?
18 A. Yes.
19 MS. BLOOMER: Objection to form.
20 Q. Is that correct?
21 A. Yes.
22 Q. If you could have in front of you just
23 briefly Mr. Romain's notes again.
24 A. These?
25 Q. These are marked as Exhibit 534A. We
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<p>1 JAMES</p> <p>2 looked at this page a little earlier, page 8,</p> <p>3 the last paragraph.</p> <p>4 A. Yup.</p> <p>5 Q. If you looked at the first sentence,</p> <p>6 if you could just direct your attention to the</p> <p>7 second sentence, please. It says, "The open</p> <p>8 traded value of the customer positions traded on</p> <p>9 foreign exchanges and certain nonOCC cleared</p> <p>10 domestic exchanges as of the closing was</p> <p>11 approximately negative 154 million."</p> <p>12 A. OK.</p> <p>13 Q. Do you see that?</p> <p>14 A. Yup.</p> <p>15 Q. Did you have any involvement in that</p> <p>16 calculation, Ms. James?</p> <p>17 A. No.</p> <p>18 Q. Other than it appearing on</p> <p>19 Mr. Romain's notes from his deposition, do you</p> <p>20 have any idea who was?</p> <p>21 A. No.</p> <p>22 Q. Do you know which affiliates positions</p> <p>23 were held in that account number, 084F?</p> <p>24 A. At what time?</p> <p>25 Q. Just before the markets opened on the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 22nd of September, 2008?</p> <p>3 A. OK, can I -- I didn't actually know</p> <p>4 there was positions prior to the opening on the</p> <p>5 22nd. So, no.</p> <p>6 Did I eventually find out afterwards</p> <p>7 who the positions belonged to? Yes. But it was</p> <p>8 probably four to five weeks before I knew that</p> <p>9 there was actually more than one affiliate in</p> <p>10 that account.</p> <p>11 Q. If you could tell me what the state of</p> <p>12 your knowledge as it is today which affiliates</p> <p>13 were in that account?</p> <p>14 A. It is LBSF and LBSA, I think are the</p> <p>15 acronyms. Don't ask me what they stand for</p> <p>16 because I don't know.</p> <p>17 Q. Paragraph 10, you go on to say, "As of</p> <p>18 the open of business on September 22, 2008, LBI</p> <p>19 maintained a positive collateral balance in the</p> <p>20 OCC affiliate futures account of 46,406,000."</p> <p>21 Do you see that?</p> <p>22 A. Yup.</p> <p>23 Q. Was that a figure, 46 million, that</p> <p>24 you calculated?</p> <p>25 A. No, it was taken from the OCC report.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Q. You go on to say, "The positions in</p> <p>3 this account have since been moved to the 084C</p> <p>4 customer account and were then closed out at a</p> <p>5 net cost of 35,753,250 dollars."</p> <p>6 A. Yes.</p> <p>7 Q. Do you see that?</p> <p>8 The 084C customer account is a</p> <p>9 Barclays account, is that correct?</p> <p>10 A. No.</p> <p>11 Q. You already said --</p> <p>12 A. Well -- I'll correct that, not at the</p> <p>13 morning of the 22nd, no. It was renamed --</p> <p>14 because it was Lehman. It was renamed to</p> <p>15 Barclays after the time of the acquisition. It</p> <p>16 has since been closed.</p> <p>17 Q. When were those affiliate positions</p> <p>18 moved?</p> <p>19 A. It was the week following the 22nd,</p> <p>20 but I cannot remember which day.</p> <p>21 Q. And where were they moved from,</p> <p>22 account 074C?</p> <p>23 A. No. 08 -- they were moved from 084F</p> <p>24 to 084C.</p> <p>25 Q. I understand. You then say they were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 closed out at a net cost of 35,700,000?</p> <p>3 A. Yeah.</p> <p>4 Q. What is the source of information for</p> <p>5 your declaration there? Did you calculate the</p> <p>6 35,000 -- 35 million, rather?</p> <p>7 A. No. It was actually calculated by the</p> <p>8 operations staff.</p> <p>9 Q. Who were the operations staff?</p> <p>10 A. It, I believe it was Tom Giosanda.</p> <p>11 Q. Do you know how he calculated that?</p> <p>12 A. No.</p> <p>13 MS. BLOOMER: Objection to form.</p> <p>14 Q. Do you know why he calculated that?</p> <p>15 MS. BLOOMER: Objection, foundation.</p> <p>16 A. Yes, but I'm not sure if that's</p> <p>17 privileged.</p> <p>18 MS. BLOOMER: Anything that you</p> <p>19 learned from counsel, any discussions you</p> <p>20 have had with counsel, you should not be</p> <p>21 talking about today.</p> <p>22 Q. Did Mr. Giosanda provide you with a</p> <p>23 report that contained that figure? How did he</p> <p>24 communicate that to you?</p> <p>25 A. That's where I have got the issue</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 where I don't know if it is privileged. Can we
3 just step -- can I double --
4 Q. Do you want to go off the record for
5 one minute?
6 A. Sorry.
7 MS. BLOOMER: Sure.
8 A. I get confused on what's privileged
9 and what's not. I apologize.
10 Q. We all do.
11 (Recess)
12 A. Do you want to repeat the question?
13 Q. The question pending is did
14 Mr. Giosanda provide you with a report that
15 contained that figure? And that figure is the
16 35 million, the figure referenced in paragraph
17 10 of your declaration?
18 A. Yes, he did. And his name is spelled
19 G-I-A-S-O-N-D-A.
20 MR. OXFORD: Trish, we should probably
21 circle back once we are finished today on
22 all the requests, but I don't believe that
23 report has been produced to us. If you
24 could take this as our request for the
25 production of that report as soon as
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1 JAMES
2 MS. BLOOMER: Objection, foundation
3 and beyond the scope of the 30(b)(6).
4 A. I actually don't know.
5 Q. You don't know if it was returned to
6 the affiliated or credited somehow?
7 A. I don't know.
8 Q. Did the -- withdrawn. Did Barclays --
9 MS. BLOOMER: I am sorry, objection to
10 the form of your last add on to your
11 question. It implies returning it to the
12 affiliate implies it was the affiliates to
13 begin with. That's a fact not in evidence.
14 MR. OXFORD: Yeah, that's actually a
15 good objection, Trish.
16 Q. Do you know if affiliates typically
17 provided collateral to Lehman to cover the
18 margin that Lehman would have to post with
19 exchanges?
20 A. I don't know.
21 Q. Do you know the date that the
22 close-out of the Lehman affiliate positions, the
23 OCC futures we have been discussing?
24 A. It was at some point that week of the
25 22nd, the week after the 22nd. I'm not sure
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1 JAMES
2 possible.
3 MS. BLOOMER: Sure, we can recap this
4 afterwards off the record.
5 MR. OXFORD: That's fine, I appreciate
6 that.
7 Q. You used the phrase in paragraph 10,
8 net cost to refer to the 35 million. Do you see
9 that?
10 A. Yup.
11 Q. What do you understand by that phrase,
12 net cost?
13 A. In this instance, what the net cost
14 means is the realized loss that was generated on
15 the close-outs of the trades. So that's
16 original trade provides to the price we
17 physically closed the trades out at, plus the
18 exchange fees that were generated from closing
19 out those trades.
20 Q. And a net cost is approximately 11
21 million less than the positive collateral
22 balance do you see that?
23 A. Yes.
24 Q. What happened to that, the delta
25 between those two figures?
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1 JAMES
2 which date.
3 Q. Do you know who took the decision to
4 close those out?
5 MS. BLOOMER: Objection, beyond the
6 scope of the 30(b)(6).
7 A. It was done in consultation with legal
8 counsel.
9 MS. BLOOMER: Objection. --
10 A. Yeah, I can't --
11 MS. BLOOMER: I instruct you not to
12 answer.
13 Q. Paragraph 11 covers a topic you
14 adverted to in your testimony this morning about
15 the commingling of funds. Do you see that?
16 A. Yup.
17 MS. BLOOMER: Objection to the
18 characterization of the document.
19 Q. Can you explain to me how it is that
20 you learned that collateral posted for LBI
21 affiliate futures was commingled with
22 proprietary futures collateral?
23 MS. BLOOMER: Objection to the form
24 and characterization of what she says in her
25 declaration.
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<p>1 JAMES</p> <p>2 A. Sorry, can we just -- what was the</p> <p>3 question?</p> <p>4 Q. Maybe I can ask it a different way.</p> <p>5 Can you explain what you mean by paragraph 11?</p> <p>6 A. OK -- I have got to -- LB -- Lehman</p> <p>7 put their affiliate futures in their</p> <p>8 proprietary -- in the house bucket at all of the</p> <p>9 exchanges. There was instances on the OCC</p> <p>10 options where it was in customer for some</p> <p>11 reason. But in regards to the futures, it was</p> <p>12 commingled with house. So there was no way to</p> <p>13 distinguish between what money came from the</p> <p>14 affiliate, if any, and what money came from LBI</p> <p>15 house.</p> <p>16 Q. When did you learn this Ms. James?</p> <p>17 MS. BLOOMER: Objection to form of the</p> <p>18 question.</p> <p>19 A. Three, four weeks after the 22nd.</p> <p>20 Q. How did you come to learn this fact?</p> <p>21 A. When we were putting the claim</p> <p>22 together for the affiliates, we were trying to</p> <p>23 identify if and what they had paid, that's when</p> <p>24 it became apparent.</p> <p>25 Q. And when you say they paid, you are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 referring to the Lehman affiliates?</p> <p>3 A. I'm in -- yeah, the Lehman affiliate,</p> <p>4 yes.</p> <p>5 Q. So as part of the process of filing</p> <p>6 Barclays' formal claim to the LBI estate in this</p> <p>7 matter, you embarked upon a process to try to</p> <p>8 determine what margin, if any, or what</p> <p>9 collateral, if any, was provided to LBI by</p> <p>10 Lehman affiliates, is that correct?</p> <p>11 MS. BLOOMER: Objection to the</p> <p>12 characterization.</p> <p>13 A. Say that again.</p> <p>14 Q. I don't think I could.</p> <p>15 MR. OXFORD: Could you read it back.</p> <p>16 (record read)</p> <p>17 A. Yeah, but it wasn't, it wasn't the</p> <p>18 claim to the LBI estate. It was the claim to</p> <p>19 the affiliates.</p> <p>20 Q. OK, thank you for that clarification.</p> <p>21 Were you ultimately successful in determining</p> <p>22 the question of whether or not the affiliates</p> <p>23 had posted collateral with --</p> <p>24 A. No.</p> <p>25 MS. BLOOMER: With who?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Q. With LBI for the purposes of options</p> <p>3 or futures trading?</p> <p>4 A. No. It may have been done since, I</p> <p>5 don't know. I certainly did not.</p> <p>6 Q. That's fine.</p> <p>7 This commingling of funds you just</p> <p>8 testified about for the last few minutes, is</p> <p>9 this something that is the subject of regulatory</p> <p>10 control?</p> <p>11 A. In this instance, no. In the instance</p> <p>12 where it was commingled in London, yes.</p> <p>13 Q. Can you tell me, first of all, why it</p> <p>14 was not a regulatory matter for the commingling</p> <p>15 in this instance that you talk about?</p> <p>16 A. In this instance, the affiliates'</p> <p>17 positions were commingled with proprietary</p> <p>18 positions. Affiliates get classed as</p> <p>19 proprietary, it's not an issue. In London, they</p> <p>20 commingled affiliate customer and prop which is</p> <p>21 an issue.</p> <p>22 Q. And who is the "they" in that</p> <p>23 sentence?</p> <p>24 A. LBIE.</p> <p>25 Q. And whose funds were commingled? Do</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 you know?</p> <p>3 A. The --</p> <p>4 MS. BLOOMER: Objection to the form of</p> <p>5 the question.</p> <p>6 Q. Sorry, that was a bad question. I'll</p> <p>7 try it again.</p> <p>8 You said that LBI commingled affiliate</p> <p>9 and proprietary funds?</p> <p>10 A. LBIE.</p> <p>11 MS. BLOOMER: Objection to the</p> <p>12 characterization of the testimony.</p> <p>13 Q. Yes.?</p> <p>14 MS. BLOOMER: You are saying</p> <p>15 affiliates' money was commingled with LBI's</p> <p>16 money? That's her testimony.</p> <p>17 MR. OXFORD: I am asking her to</p> <p>18 clarify if that is her testimony?</p> <p>19 A. OK, for -- in the U.S., LBI affiliate</p> <p>20 funds were commingled with proprietary. In</p> <p>21 London, LBIE, they commingled proprietary</p> <p>22 customer and affiliate.</p> <p>23 Q. OK. I have it.</p> <p>24 Paragraph 12 of your declaration, you</p> <p>25 say, "Approximately six weeks after the closing,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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I learned of the existence of the positions in the non-OCC affiliate futures accounts which by that time had been closed out by Barclays."

Do you see that?

A. Yes.

Q. Do you know, sitting here today, what the total open equity was in those non-OCC affiliate futures accounts?

A. No.

Q. Did you know at any time?

A. No.

Q. Do you know whether Barclays has performed that calculation?

A. No, I don't know.

MS. BLOOMER: Objection, beyond the scope of the 30(b)(6).

Q. Do you know who at Barclays closed out the positions you describe in paragraph 12?

A. They were closed out by Sean Byrne and Sean McKenna.

Q. Do you know why?

MS. BLOOMER: Objection, I instruct the witness not to answer to the extent she has to reveal privileged communications.

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JAMES

Q. With that instruction in mind, do you have anything other than privileged information to share?

A. Yeah, I don't -- can I just clarify something with you outside?

Q. Yeah.

A. Sorry, is that OK? Sorry?

(Recess)

A. I needed clarification. The affiliates were put into default and that's why I didn't know if it was classed as privileged or not. The accounts were put into default for not paying their margin requirements. So it means once you go into default, we then have the right to close you out which is what happened.

Q. You are going to say, "I understand that the close-out of those positions came at a net cost of 517,000." Do you see that?

A. Yeah.

Q. Can you tell me the basis of your understanding? How did you learn that?

A. It was on the same calculation that was done for number 10 in my declaration, it was the same for 12, it was done by the operations
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staff.

Q. And again, do you have any understanding of the way that calculation was done?

A. The same calculation as the one in 10, it would have been original trade price plus it was closed out at minus the costs of doing the trade, the exchange fees.

Q. Leaving the topic of a Lehman affiliate and moving on to nonaffiliate customers, can you take a look at paragraph 14 of your declaration and let me know when you have done so, please.

A. Yup.

Q. You say, "Futures customers had deposited collateral, including initial margin, with LBI prior to the closing to secure their futures trading activity."

Do you see that?

A. Yup.

Q. What collateral other than initial margin would be deposited with LBI by futures customers?

A. It's -- as in physical securities that

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would be used to secure their trading going forward and any money that they chose to put in the account. So I -- collateral as a whole.

Q. Do you know why the futures customers deposited this collateral with LBI?

A. Futures customers, in most cases, have the habit of leaving money with the FCM to cover their trading and because it is protected under the CFTC rules and regulations.

Q. And just so the record is clear, can you explain what an FCM is?

A. Futures commission merchant.

Q. Are there any regulatory requirements that mandate that futures customers deposit collateral with the broker/dealer?

MS. BLOOMER: Objection to the scope as being beyond the 30(b)(6) and instruct the witness not to answer to the extent that she would have to reveal knowledge that she learned from attorneys.

A. Say the question again. Sorry.

(Record read)

A. They have to put it with the FCM. That's the requirement.

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1 JAMES
2 Q. And in this instance, the FCM is
3 Lehman? Sorry I used broker/dealer?
4 A. Yes. They had to put it with the FCM.
5 Q. What are those regulations?
6 A. It is the CFTC's regulations.
7 Q. And just speaking generally, can you
8 tell me what those regulations require in terms
9 of the amount of collateral required to be
10 deposited by the futures customers with the FCM?
11 MS. BLOOMER: Objection, beyond the
12 scope of the 30(b)(6).
13 A. One of the rules of the CFTC, and
14 there are multiple, states that a customer has
15 to pay the initial margin requirement designated
16 by the exchange, at least a minimum of.
17 Q. OK. So if I understand your testimony
18 correctly, in certain situations, the futures
19 customer is mandated under the CFTC regs to give
20 the FCM the minimum margin.
21 A. Yeah.
22 Q. Is that correct?
23 A. Yeah.
24 Q. And that actually happened with
25 Lehman, correct?
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1 JAMES
2 Q. You are not suggesting in paragraph 14
3 that there was any improper commingling of funds
4 by LBI, are you?
5 A. No.
6 Q. OK. Thanks, I just wanted to clarify
7 that last issue.
8 OK, paragraph 15. You say, "Barclays
9 took over LBI's liabilities to the futures
10 customers in the amount of any collateral those
11 customers had posted prior to the closing to
12 secure their future, futures trading activity
13 and has since complied with its obligations to
14 the LBI futures customers in this regard."
15 Do you see that?
16 A. Yes.
17 Q. You go on to say, "Although to my
18 knowledge, Barclays was not aware of the total
19 amount of these liabilities at closing, I
20 understand that Barclays has since determined
21 that the total amount of such liabilities as of
22 that time was approximately 2 billion dollars."
23 A. Yes.
24 Q. And that time, we are talking about
25 the closing of the transaction on September 22,
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1 JAMES
2 A. Yes.
3 Q. Lehman, in fact, had substantial
4 amounts of collateral deposited by futures
5 customers under this CFTC rules, right?
6 MS. BLOOMER: Objection to form.
7 A. Yeah.
8 MS. BLOOMER: Please just give me a
9 moment after he finishes his question so I
10 can get an objection.
11 THE WITNESS: Sorry.
12 MS. BLOOMER: That's OK.
13 Q. In the second sentence of paragraph
14 14, you say, "LBI maintained this collateral
15 along with additional collateral that
16 constituted LBI's own property."
17 A. Yup.
18 Q. Does that in your eyes create a
19 regulatory issue?
20 MS. BLOOMER: Objection, beyond the
21 scope of the 30(b)(6).
22 Q. Are you suggesting that there is
23 something improper in that, in the way LBI
24 maintained those two sets of collateral?
25 A. No. It's -- now you have lost me.
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1 JAMES
2 correct?
3 A. Yes.
4 Q. Now, what's the basis of your
5 understanding about Barclays determination of
6 the total amount of liabilities to LBI futures
7 customers?
8 MS. BLOOMER: Objection, vague as to
9 time frame.
10 A. I'm not sure I --
11 Q. Let me ask it a different way. How is
12 it that you know what you write in that last
13 sentence of paragraph 15?
14 A. Because a balance sheet was put
15 together by finance who confirmed the total
16 amount of money that was there for customers.
17 Q. And that balance sheet was provided to
18 you?
19 A. I was given the number. I haven't
20 seen the full balance sheet.
21 Q. Have you seen any part of the balance
22 sheet?
23 A. No. I asked the question, what was
24 the total amount of money of customer money that
25 we were acquiring -- that was acquired and I was
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JAMES

told roughly 2 billion.

Q. Who told you that?

A. That was Lee Bowell who works for Gary Romain.

Q. Just skipping ahead for a moment paragraph 17, the second sentence, you say, "Barclays has received customers' futures collateral totalling 2.2 billion dollars." Do you see that?

A. Yeah.

Q. Would you agree that, looking at your declaration, Barclays has received customers' futures collateral in excess of the estimate of total liabilities of 2 billion dollars?

MS. BLOOMER: Objection to the form of the question.

A. This is where I am going to have a problem with your word of "excess." This is where we need to clarify how futures works. OK? At the time of us taking over on the 22nd, Lehman's would not give us the total assets they were holding for their customers and where it was being held and even what their full positions were. They had no idea.

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So they couldn't tell us this is the total amount of money that we owe to customers, this is the total amount of money we have with the broker, this is the total amount of the money we have with the exchange. Which is extremely scary.

These numbers that have been put together were put together by the finance guys months afterwards.

It took about two months for us to clean up the books and records that were given to us by Lehman and the reason being is because they had commingled their FX trading and their futures trading into the same accounts, into the same books and records. They had converted all of the customers' currency into U.S. dollars.

So when we paid the customers back, we had to go and do FX transactions to acquire all that currency which cost us 60 million dollars to actually get back the currency.

There was also an issue where trades that should have been booked prior to us taking over in the books and records were not booked. They were booked after. We then identified that

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they commingled trades in London, and in one particular instance, a customer's positions were actually sold off because the OCH was under the impression they were house positions and they were not. It cost the customer 20 million pounds, so 40 million dollars, which we then reimbursed the customer and we have a claim against that.

So -- and we still have Korean outstanding for customers that we don't have back and we are going to have do an FX deal against that.

So when you pick up and move a futures business, you take every account that is designated as seg. and secured to insure you can pay back your customers.

Could Lehman tell us what was in those accounts? No, not in any way, shape or form.

Q. Just again looking at your declaration, it looks, comparing paragraph 17 and 15, it appears that Barclays has received customers' futures collateral of 2.2 billion, correct?

A. Yup.

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JAMES

Q. And the total liabilities to customers in connection with that same category of asset --

A. Yup, yup.

Q. -- was approximately 2 billion?

A. Right.

MS. BLOOMER: Objection to the time frame. Vagueness.

Q. Is there a reason that it is not appropriate to conclude that Barclays has received more customer futures collateral than it has liabilities to customers in connection with that collateral?

A. Well, now I think I would have to object to that and the reason being is because Barclays acquired Lehman's futures business as and to continue to keep it running. To keep a business running, you have to insure you have money in those accounts and you're safe and secured to pay back every single customer and never at any time be under-segregated.

So do you have to have your own money in a designated seg. and secured account? Yes, you do. Is that a cost of doing business? Yes,

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<p>1 JAMES 2 it is. 3 Q. Either I didn't understand that answer 4 or you didn't understand my question. Either 5 way, let's try again. 6 Your declaration sets out in paragraph 7 17 that Barclays has to date received customer 8 future collateral totalling 2.2 billion dollars, 9 correct? 10 A. Yup. 11 Q. Your declaration also says that 12 Barclays' liabilities assumed to customers in 13 connection with customer future collateral is 14 approximately 2 billion dollars? Correct? 15 MS. BLOOMER: Objection to the 16 vagueness of the time frame. 17 A. Yeah, that's what's in my declaration, 18 yes. 19 Q. Is it a reasonable conclusion from 20 that that Barclays has received more collateral, 21 the 2.2 billion dollars for Barclays futures 22 collateral, than it has liabilities to 23 customers, 2 billion in paragraph 15? 24 A. Yes, but that's not factor in the FX 25 exposure and it does not factor in the loss of TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 the LIFFE trading, European trades. 3 Q. Leaving aside the LIFFE trades and the 4 FX exposure, can you tell me why it is Barclays 5 has received more customers' future collateral 6 than it owes to customers? 7 A. Because Barclays took over the seg. 8 and secured accounts, the designated seg. and 9 secured accounts. When you take over those 10 designated accounts, you take everything that is 11 in it. 12 Q. I think I understand. So that if in 13 those designated accounts, there is more 14 collateral than is owed to customers, then 15 Barclays claims that as part of the business 16 that it acquired? 17 A. Yes. 18 Q. Can you turn to Exhibit 2 of your 19 declaration, please. 20 A. OK. 21 MS. BLOOMER: If you are ready for a 22 break at any time, you can say so, OK? 23 MR. OXFORD: Do you want to take five 24 minutes? 25 THE WITNESS: Yeah. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 (Recess) 3 Q. Ready to go back on? 4 A. Yes. 5 Q. Ms. James, are you able to testify as 6 to the open equity -- sorry, the value of the 7 open equity of the customer or future positions 8 that were held by the futures customers as of 9 the opening of business September 22, 2008? 10 A. No. 11 Q. And you are not able because you 12 haven't done that calculation? 13 A. Not able due to the books and records 14 that we got from Lehman. Due to the books and 15 records that we got from Lehman. They weren't 16 in a state to be able to tell us because there 17 were some adjustments and issues and problems 18 that they had not booked and the customers 19 continued to trade. It's impossible to actually 20 tell. 21 Q. Was there any way to tell open equity 22 positions for futures customers once Barclays 23 acquired the business? 24 A. I believe, and I'm not sure, I believe 25 the finance guys may have looked at it, but I TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 don't know, and the value of the customers' 3 positions is -- it is their money and it is 4 their risk and their values, so it is not -- it 5 is not Barclays, so it doesn't -- it is not a 6 value for us. Does that make sense? 7 Q. I think it does. I think if I 8 understand your testimony correctly, you're 9 saying that Barclays makes a profit by having 10 customers and charging them fees, but the gain 11 or loss on those positions is borne by the 12 customers, not Barclays, correct? 13 A. Correct, yeah. 14 Q. Focusing on Exhibit 2 for a moment, 15 Ms. James, Exhibit 2 to your declaration -- 16 A. Yup. 17 Q. -- it is entitled, "Customer 18 collateral delivered to date valued as of 19 September 19, 2008." Do you see that? 20 A. Yes. 21 Q. Did you create Exhibit 2? 22 A. Yes, and I have to say the date is 23 wrong. 24 Q. What should the date be? 25 A. This, this was -- wait a minute. This TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES 2 I believe may have been October of -- it was 3 October sometime, I think. I apologize. 4 Q. Do you know what the correct value is 5 as of September -- 6 A. Sorry, no, it's not, it has the money 7 markets. It would have been January. So sorry. 8 Q. January 2009? 9 A. Yes. 10 Q. Do you know when in January, 2009? 11 MS. BLOOMER: You can use your notes 12 to refresh your memory. I would suggest 13 that you do. 14 THE WITNESS: That's why I thought I 15 had it on here. 16 Oh, yes, I do. January '09. I 17 thought I did. 18 MS. BLOOMER: This is Exhibit 2. 19 A. Right. 20 Q. Can you tell me, Ms. James, which 21 portion of your notes you are looking at, in 22 that Exhibit 552? 23 A. I thought I had it in these notes, 24 which I don't. 25 MS. BLOOMER: If you allow me to point TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 her to what she is looking for, I think I 3 know what she is looking for. 4 MR. OXFORD: Please. 5 MS. BLOOMER: You talked about Exhibit 6 2 to your declaration at the very end and 7 you say that -- so what is it -- you 8 interpret it any way you want, but I think 9 you were noting to yourself something. 10 A. Yeah, and that's -- no, it was, it was 11 January because we had, we had received some of 12 the money market funds, so it was January. 13 MS. BLOOMER: January that you 14 prepared it or January the value that's 15 reflected there? 16 A. Why didn't I put this in my notes. I 17 know I needed to change it. I'm actually not 18 sure now. I confused myself. Sorry. 19 Q. Ms. James -- 20 MS. BLOOMER: Why don't we take a 21 short break. 22 MR. OXFORD: Can I just ask -- 23 MS. BLOOMER: Absolutely, yes. 24 MR. OXFORD: A couple of questions. 25 MS. BLOOMER: I'm not trying to impose TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 at all here. 3 Q. So Ms. James, which portion of your 4 notes did your lawyer direct you to? Was that 5 the fourth page of your notes? 6 A. It is the ones, questions 21 and 22. 7 But of course that's E1 and E2, which is not 8 Exhibit 1, 2 and 3. 9 Q. Right. Just so we have a clear 10 record, my questions are directed toward Exhibit 11 2 to your declaration that was dated January of 12 2010? 13 A. Yes. 14 Q. Not to Exhibit E2 to the SIPA claim? 15 A. Correct. And I thought I had put in 16 my notes that I needed to amend Exhibit 2, and I 17 thought I put the date on here. But actually, I 18 obviously didn't. 19 Q. Did you create Exhibit 2? 20 A. Yes. 21 Q. And how did you go about doing that? 22 A. This was created from information that 23 was being gathered by operations of money that 24 we had received from the market, money -- from 25 the money market funds with approval of the TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 trustees and money that had been received from 3 the foreign brokers with approval of the 4 trustees and money that was received from the 5 bank accounts with approval of the SIPC 6 trustees. It is SIPC, isn't it? The trust -- 7 Q. We will take that. 8 A. I get confused. 9 Q. Do you personally, Ms. James, have any 10 information about the approval of the SIPA 11 trustee for the transfer of the funds reflected 12 on Exhibit 2 to your declaration? 13 A. Yes, because I requested more. 14 Q. Looking first at money market funds, 15 can you tell me approximately when the money 16 market funds reflected on Exhibit 2 to your 17 declaration were received? 18 A. January, end of December, beginning of 19 January, '08, '09. 20 Q. And the cash, when was that received? 21 A. It's the cash that was received. The 22 first amount came in September 23rd or 4th, and 23 the last one was probably the middle to end of 24 October. 25 Q. And you also have a third category of TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 assets called foreign brokers. Do you see that?
3 A. Yup.
4 Q. That appears to total about 265, 266
5 million dollars, right?
6 A. Yup.
7 Q. When were those amounts received by
8 Barclays?
9 A. Between the middle of November and the
10 beginning of January.
11 Q. November '08, January '09?
12 A. Yeah, sorry.
13 Q. It is always hard, the start of the
14 new year. Everyone is dating their check.
15 A. Exactly.
16 Q. And to Trish's question to you a few
17 minutes ago, the title is customer collateral
18 delivered to date, valued as of September 2008?
19 You said that date should be amended to January
20 2009?
21 A. Yes.
22 Q. And does that reflect amounts received
23 by January 2009?
24 A. Correct, it does.
25 Q. And what is the valuation date? Is it
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1 JAMES
2 Exhibit 3?
3 A. We took -- the same information that I
4 took from operations on what were the money
5 market funds we had not received, what's the
6 foreign broker's money that was still sitting in
7 the broker's statements we had not received, and
8 what was the money on the Lehman entity broker
9 statements that we had not received for the
10 customer designated accounts.
11 Q. I don't think I have asked you this,
12 but if I did I apologize: Where did you get the
13 foreign broker's statements that you used to
14 compile this information?
15 A. From the operations team.
16 MS. BLOOMER: If I could ask a
17 clarifying question, is the title correct on
18 this?
19 THE WITNESS: No. It's January as
20 well. Sorry because they, Exhibit 2 and
21 Exhibit 3 were done at the same time.
22 Q. Then I have -- thanks for that Trish,
23 the same set of questions that I just went
24 through with Exhibit 2.
25 Do the values that are reflected on
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1 JAMES
2 January 2009 or is it September 19, 2008?
3 A. It is January 2009. So it is amounts
4 that were received up until January of 2009 and
5 valued 2009 because the value wouldn't have
6 changed.
7 Q. The value of none of these --
8 withdrawn.
9 If I understand your last answer,
10 you're saying that the value of these assets on
11 January 2009 would have been the same as
12 September 19 of 2008, is that correct?
13 A. Yes.
14 MS. BLOOMER: Object to the question.
15 A. Well, plus or minus the FX rate.
16 Q. I think that is all I have for that
17 exhibit right now. If you could turn to Exhibit
18 3, please. This is Exhibit 3 to your
19 deposition. It is entitled, "Customers futures
20 collateral undelivered to date values as of
21 September 19, 2008."
22 A. Yes.
23 Q. Did you create Exhibit 3, Ms. James?
24 A. Yes.
25 Q. How did you go about creating
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1 JAMES
2 Exhibit 3 of 488 million or so, would they
3 change if you were to recalculate this with the
4 valuation as of September 19, 2008?
5 A. Yes.
6 Q. Would it be up or down?
7 A. I don't know.
8 MR. OXFORD: Trish, we can again
9 circle back at the end of the deposition,
10 but I don't think I have seen the broker
11 statements that are the basis for this
12 calculation.
13 MS. BLOOMER: Sure. What date were
14 the broker statements you were looking at?
15 THE WITNESS: January.
16 MR. OXFORD: January broker
17 statements.
18 THE WITNESS: Yes. For that -- for
19 this, for Exhibit 3, it is January broker
20 statements.
21 Q. Do you also have for the same brokers,
22 do you have in your possession -- not today, but
23 in your role at Barclays -- statements for the
24 same brokers reflecting the positions and margin
25 as at September 19, 2008?
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JAMES

A. I assume somebody does, yes.

Q. Would those statements reflect the total open equity of the positions held at those brokers?

MS. BLOOMER: Objection, no foundation.

A. Which date?

Q. Well, let's work backwards from January. The January statements that you used as the basis for compiling Exhibit 3, do those show the total open equity of the positions as at the date that's borne on the report?

A. There were no open positions in January. They had all been closed.

MS. BLOOMER: I have an objection to the form of the question. It is ambiguous.

Q. Do you have any reason to believe that the statements for these same brokers, that you believe someone in Barclays will have, dated September 19, 2008, do you have any reason to believe that those reports don't show the total open equity of the positions at those brokers?

A. No, I would assume they show them.

Q. Similar to the brokers statements we
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JAMES

talked about before, would you also assume that those statements reflect the minimum exchange margin requirement?

MS. BLOOMER: Objection.

A. I would assume so. Don't know for definite.

Q. Similarly, would you assume that those same broker statements would reflect the amount of margin or collateral that is posted against those same requirements?

MS. BLOOMER: Objection to the form of the question.

A. Yes, but you do have to remember, these are the customer accounts. It is customer designated money.

So if there is a bigger requirement in those accounts than what they are trading, it's because it is designated as a customer account and they were holding that currency.

Q. Can you explain that to me, please.?

MS. BLOOMER: Objection to the form of the question.

Q. When -- I need more information.

When you're trading in Asia, a lot of
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JAMES

the currency is restricted, if you notice a lot of this outstanding. So you have to trade and keep the currency in -- you have to stay in your restricted currency.

So would there occasionally be more money in the account than is needed to be there to fund the current trading? Yes. But it still customer-designated money. A customer may have chosen to keep it there. If that makes sense.

MR. OXFORD: Did you want to take a break for a couple of minutes Trish, you asked for a break a couple minutes ago.

MS. BLOOMER: No, we took the break.

MR. OXFORD: Maybe we did it off the record.

Q. Ms. James, is there a relationship between the amount of money that is posted by customers with the FCM that you describe here as customers' futures collateral and the collateral that has to be posted by the FCM with the relevant exchange?

MS. BLOOMER: Objection to form.

A. What do you mean by "relationship"?

Q. Well, as a general matter -- and I
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JAMES

understand that things may differ slightly from exchange to exchange -- but if I am a customer and I am required under the CFTC rules to provide collateral to my FCM, do those rules require then the FCM to post the same margin with the exchange?

A. Normal practice, yes.

Q. So normally, if my -- if I am a customer and my position requires 100 dollars of margin, the normal practice is that I am required under the rules to provide that collateral to my FCM?

A. Yes.

Q. And when Barclays assumed responsibility for what you have described as the Lehman futures business, did it also assume -- it assumed the customer futures collateral that we have been talking about, it also assumed the liabilities to customers that you have said are approximately 2 billion dollars, did Barclays also assume the margin or collateral that was posted by Lehman on behalf of these futures customers at the various exchanges?

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JAMES

MS. BLOOMER: Objection as vague.
A. That's a -- the way it works is when you pick up the futures business, you're picking up the complete customer seg. and secured accounts. A customer, a broker is designated as being a seg. and secured.

So Lehman having their own money in there to stop you going under seg.'d, you can't say the dollar at this broker is a dollar from this customer or a dollar from Lehman. You can't. So when you pick up and move the business, you're taking and moving everything. I'm not sure that --

Q. I'm not sure it answers my question, but I understand what you are saying. Cash is fungible, correct?

A. Yes.

Q. My question was a little different or at least it was intended to be.

A. It may be I misinterpreted.

Q. To the best of your understanding, it is Barclays' position that when it assumed responsibility for the customers' futures business of Lehman, as you describe, that it TSG Reporting - Worldwide 877-702-9580

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JAMES

assumed certain obligations to customers, the 2 billion dollars that you have testified about, and gained an entitlement to the futures customer collateral, 2.2 billion that has already been received, correct?

A. Yup.

Q. And the 488 billion that's reflected on Exhibit 3 --

A. Yup.

Q. -- that Barclays says has not been received, but claims entitlement to, correct?

A. Yup, yup.

Q. Did Barclays also acquire the collateral that was posted at the futures exchange by Lehman to cover those positions of the same futures customers?

MS. BLOOMER: Object as beyond the scope of the 30(b)(6).

A. The problem is that's not a question I can answer because I don't know if it was Lehman's collateral at the exchange or the customers's collateral at the exchange. That's the issue I'm having.

Q. I understand. Let's try it this way. TSG Reporting - Worldwide 877-702-9580

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JAMES

Under what circumstances, generally speaking, does a customer post collateral at the exchange as opposed to when an FCM posts collateral at the exchange?

MS. BLOOMER: Objection, lacks foundation, and is vague.

A. When a customer gives you collateral, collateral has to go to the exchange and the broker where they are trading. It passes through.

Under the CFTC requirements, you keep excess collateral in your seg. and secured accounts to stop you going under-funded. Can I tell you that the money or collateral -- the terminology, collateral at the exchange belonged to the customer or to Lehman? No, I can't. Does that --

Q. I think that is helpful. If the customer posts collateral directly to the exchange --

A. They can't do that.

Q. OK, then I misunderstood your last answer.

How is it that customer collateral TSG Reporting - Worldwide 877-702-9580

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JAMES

gets posted to the exchange?

MS. BLOOMER: Objection to the form of the question.

A. Via the FCM.

Q. So the customer posts this hypothetical hundred dollars of margin that is required with the FCM, the FCM then posts that same hundred dollars --

MS. BLOOMER: Objection, mischaracterizes the testimony.

Q. -- to the exchange, is that correct?

A. Yeah, it was flow-through, yes.

Q. And under those situations, is the FCM also required to keep a hundred dollars or perhaps hundred dollars plus some additional cushion in a segregated account?

A. Yes.

Q. So whether the collateral is posted by the customer or by the FCM with the exchange, there is essentially two pots of margin here. There is one set of margin that is posted with the exchange and that same amount of money is held perhaps with an additional cushion in a customer-segregated account, is that correct?

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<p>1 JAMES 2 MS. BLOOMER: Objection, misconstrues 3 the testimony. 4 A. No, I don't -- no, I don't agree with 5 that. 6 Q. OK, can you, hold on a minute. 7 (Pause) 8 Q. Is the customer-segregated account 9 kept at the FCM or is it kept at the exchange? 10 A. Both. 11 Q. Can you explain to me how that works? 12 A. You have designated accounts, that is 13 classed as seg. or secured, that are held with 14 an exchange, a broker, a trust account, a bank 15 account and a money market. They are all 16 designated as being seg. And you can hold the 17 money or collateral securities in governments 18 and stuff in any of those. They are all 19 designated as being seg. 20 MR. OXFORD: Can we take a two-minute 21 break and then I think I can finish this 22 line of questioning and we can move on a 23 little bit. 24 MS. BLOOMER: Sure. 25 (Recess) TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Q. Ms. James, let me try and clarify my 3 understanding of your testimony. If a futures 4 customer places or would like to place a 5 position on a futures exchange, then the FCM can 6 place the margin on behalf of that customer, 7 correct? 8 A. Yes. 9 Q. In the situation -- 10 A. Well -- they have to have got the 11 money from the customer first. 12 Q. OK, that's where I was going with my 13 next question. 14 A. Sorry. 15 Q. So just keep it in baby steps so I can 16 keep up with my own questions, where a customer 17 places a position with an exchange, it does so 18 via the FCM, correct? 19 A. Yes. 20 Q. And where the FCM posts the margin on 21 behalf of that customer's position, the CFTC 22 requires the customer to give that same margin 23 in most circumstances to the FCM, correct? 24 A. Yes. 25 Q. And the FCM is required, under TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 regulations, to keep that margin or collateral 3 that is provided by the customer to the FCM in a 4 segregated account, is that correct? 5 A. Yes. Or secured. 6 Q. And the margin that is posted by the 7 FCM to the exchange is held in the name of the 8 FCM, correct? 9 A. Yes. Designated as a customer seg. or 10 a customer-secured account. 11 Q. But with that qualification, it would 12 be running in Lehman's name or Barclays' name, 13 as it were, at the relevant exchange, correct? 14 A. Yes. 15 Q. And when Barclays took over what you 16 have described as the Lehman futures business on 17 the 22nd of September, 2008, did it assume 18 responsibility, in your understanding, for both 19 the margin posted at the exchange and the 20 collateral that has been posted by the customer 21 with Lehman to secure the placing of that 22 margin? 23 MS. BLOOMER: Objection to the form of 24 the question and beyond the scope of the 25 30(b)(6). TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Q. Do you need that read back? 3 A. Yeah. 4 (Record read) 5 MS. BLOOMER: I object, again, to the 6 form of the question as vague and ambiguous. 7 A. Yeah, I'm not sure that makes sense to 8 me. 9 MS. BLOOMER: I think the witness has 10 said she doesn't understand your question. 11 Do you have another question? 12 MR. OXFORD: I am waiting for the 13 witness to finish rereading it. 14 A. Do you want to reword that question? 15 Sorry, I'm a bit -- 16 Q. Well, maybe I can break it up. 17 The 2 billion dollars -- withdrawn. 18 Let me start again. 19 The 2.2 billion dollars that are 20 referenced in Exhibit 2 to your declaration, 21 those were -- that's collateral placed by 22 customers with Lehman, correct? 23 MS. BLOOMER: Objection, 24 mischaracterizes the declaration and the 25 exhibit. TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES 2 Q. Is that correct? 3 A. It's money -- well, it's collateral or 4 money, as it says, that we have received back 5 from the customer seg. and secured account. 6 That's what the 2.2 is. 7 Q. I think I see the distinction you're 8 making. It is not necessarily money received 9 from customers, but it was monies held by Lehman 10 in the seg. account and secured accounts as is 11 required under the CFTC? 12 A. Designated as customer seg. and 13 secured money, yes. 14 Q. OK. In addition to those monies, did 15 Barclays, to your understanding, obtain any 16 margin or other collateral posted at the 17 exchange in designated customer accounts that 18 had previously been posted by Lehman? 19 MS. BLOOMER: If I could interject, I 20 realize the reason why we are all talking 21 past each other, why you two are talking 22 past each other. So allow me to explain if 23 it would assist the report. 24 MR. OXFORD: Yeah can we go off the 25 record for a second. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 (Pause) 3 Q. If you could have 552 in front of you 4 please, Ms. James. 5 A. My notes? 6 Q. Your notes? 7 MS. BLOOMER: I have a copy that's not 8 labeled. 9 Q. If I could direct your attention to 10 question 16A, is one of the 30(b)(6) topics on 11 which you have been designated and the topic is 12 Barclays knowledge and the source of that 13 knowledge about the value of LBI's open 14 positions at the OCC and any other foreign or 15 domestic exchange on September 19, 20 and 21, 16 2008. Do you see that? 17 A. Yup. 18 Q. We have covered in -- mostly in 19 connection with futures and a little about with 20 the OCC. So I just want to circle back. 21 What knowledge do you have concerning 22 the value of LBI's open positions at the OCC as 23 of closing? 24 MS. BLOOMER: Objection as vague as to 25 the time frame. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 A. At the time of closing, I had no 3 knowledge. 4 Q. OK, sitting here today. 5 A. Sitting here today, I am aware that 6 the finance guys, I believe, actually took the 7 equity option positions and valued them and I 8 believe it took them a couple of months to 9 actually figure out what the positions were and 10 to actually value them through the risk systems. 11 Barclays was not an equity option 12 house really prior to the acquisition. So it 13 didn't have risk systems and equity options 14 systems in place for valuing these. So when 15 we -- when Barclays got the positions, Lehman 16 actually couldn't give them a lot of that 17 information. So it took months for the finance 18 guys to actually figure out what was the value. 19 The other issue was that the positions 20 for the affiliates, some of the positions for 21 the affiliates are in with the prop, some of the 22 positions for the affiliates were in with the 23 customer. But what I do understand is that all 24 the margin money at the OCC that was posted in 25 the prop account was actually LBI's money. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Apparently none of it belongs to the affiliates. 3 That is what I have learned since. 4 Q. And have you learned, since the 5 closing, Ms. James, what were the value of LBI's 6 open positions at the OCC as of the time of 7 closing? 8 A. I actually don't think anybody has 9 given me a number, no. Is it in -- I don't 10 remember if it was in -- 11 MS. BLOOMER: I would object as being 12 beyond the scope of the 30(b)(6). 13 MR. OXFORD: I think it is actually 14 directly within the scope of the 30(b)(6). 15 MS. BLOOMER: The 30(b)(6) topics 16 about the value of the position, Barclays' 17 knowledge of the value of the positions on 18 September 19, 20 and 21st. Not the 19 knowledge now of the value of the positions 20 on those dates. 21 So it is beyond the scope of the 22 question. 23 MR. OXFORD: We can agree or disagree. 24 I think it is clearly within the scope. It 25 seems like the witness doesn't know the TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 answer.
3 MS. BLOOMER: The witness didn't
4 prepare herself for the answer because it is
5 beyond the scope of the 30(b)(6).
6
7 MS. BLOOMER: For the record, I do
8 believe that some of the topics that Gary
9 Romain was designated to cover yesterday
10 went to the issue of the valuation of the
11 positions as the valuation was learned after
12 the fact. So I do believe that topic was
13 designated to him, not to her.
14 MR. OXFORD: Can we mark this as the
15 next.
16 (Exhibit 553, multipage spreadsheet
17 marked for identification, as of this date.)
18 Q. Ms. James, I have put in front of you
19 what I have marked as Deposition Exhibit 553.
20 You will see that it was a multipage
21 spreadsheet, about half an inch thick. Can you
22 take a moment to flip through and tell me
23 whether you have ever seen this before.
24 A. No.
25 Q. Were you involved in the process,
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1 JAMES
2 trade. Original trade price, current closing
3 price in the market and do the calculation.
4 Q. And can you tell me, if you know, why
5 it took, as you note on the first page under
6 options, that it took months to figure out the
7 values before closing after closing?
8 A. The reason it took as long as it did,
9 as I said, Barclays was not an equities house,
10 so it didn't have equities systems. And Lehman
11 did not have a decent list of the transactions,
12 the open positions that they had on.
13 So we had no risk system in Barclays.
14 There was no correct information coming out of
15 Lehman. So by the time they gathered the
16 information, and then go back and actually get
17 all the prices to try to value it back at these
18 dates -- which of course with the volatility in
19 the market and moving, your positions have moved
20 on, I believe that's why it took as long as it
21 did.
22 Q. Is it fair to say that the main reason
23 the valuation of the options positions would
24 take longer for Barclays than the futures
25 positions valuations is that Barclays had
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1 JAMES
2 Ms. James, of valuing the LBI open positions at
3 the OCC at any point after the closing?
4 A. No.
5 Q. Do you know who at Barclays was
6 that -- you testified I believe about some
7 finance people who were?
8 A. I believe it was finance, yes.
9 Q. Do you know who in finance was
10 responsible for that?
11 MS. BLOOMER: Objection, beyond the
12 scope of the 30(b)(6).
13 A. I'm afraid I don't.
14 Q. And I presume you don't know the
15 methodology either that they employed, correct?
16 A. No, I don't.
17 Q. How would you go about valuing the LBI
18 open positions at the OCC as of the time of
19 closing?
20 MS. BLOOMER: Objection. Far beyond
21 the scope of the 30(b)(6).
22 A. I'm assuming we are talking for the
23 equity options?
24 Q. Yes.
25 A. The same way I would value the futures
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1 JAMES
2 experts such as you in the futures market, but
3 it didn't have similar experts in the OCC area?
4 MS. BLOOMER: Objection, no
5 foundation, and beyond the scope of the
6 30(b)(6).
7 A. I would assume, yes.
8 Q. If I can direct your attention to your
9 notes. I don't have any other questions about
10 Exhibit 553.
11 Do you see under options, the second
12 line says, "Option reports to Stephen King on
13 9/19 as of 9/18. Call on, no lots, no clear
14 value, no client, no house."
15 Do you see that?
16 A. Yes.
17 Q. Can you explain what you mean by that,
18 please?
19 A. I -- there was a report sent from a
20 person in Lehman, an e-mail that was sent from
21 Lehman to Stephen King and Tim Stack. I can't
22 remember which way around it was. I believe it
23 went straight to Stephen giving supposedly the
24 OCC equity options positions, but it didn't show
25 all of the positions. It didn't show the number
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<p>1 JAMES</p> <p>2 of lots. There was a number on it, but there</p> <p>3 was no designation if that was actually a value</p> <p>4 or not. And there was no separation between it</p> <p>5 being client, house, or affiliate.</p> <p>6 So was something sent to Barclays,</p> <p>7 yes. Could Barclays actually take from that</p> <p>8 what they were getting? No.</p> <p>9 (Exhibit 554, e-mail dated 9/19/2008</p> <p>10 with attachment marked for identification,</p> <p>11 as of this date.)</p> <p>12 Q. Ms. James, I have handed you what I</p> <p>13 have marked as Exhibit 554 which I will identify</p> <p>14 for the record as an unBates-stamped e-mail from</p> <p>15 Christopher Mincak, M-I-N-C-A-K, to Stephen King</p> <p>16 and others at Barclays on Friday, 19th of</p> <p>17 September, 2008 at 4:445 p.m.?</p> <p>18 MS. BLOOMER: Note for the record that</p> <p>19 I believe we did provide you the Bates</p> <p>20 numbers for this even though it doesn't</p> <p>21 appear on this, in an e-mail last night.</p> <p>22 Q. OK. Can you take a moment to look at</p> <p>23 Exhibit 554 and can you tell me if that is the</p> <p>24 report to which you refer in your notes that you</p> <p>25 just testified about?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 MS. BLOOMER: Objection, vague. I</p> <p>3 believe she refers to more than one report.</p> <p>4 A. Yes, but I certainly didn't see all of</p> <p>5 this.</p> <p>6 Q. When you say you never saw all of it,</p> <p>7 can you explain?</p> <p>8 A. I think, I think the report I was</p> <p>9 originally shown, there was like 25 pages.</p> <p>10 Not -- not a brick.</p> <p>11 Q. And who showed you the report, the 25</p> <p>12 page version of the report, Ms. James? Was that</p> <p>13 Mr. King?</p> <p>14 A. Yeah.</p> <p>15 Q. So is it your testimony that you have</p> <p>16 seen 25 pages of this --</p> <p>17 A. Yes.</p> <p>18 Q. -- e-mail and the attachment?</p> <p>19 A. Yes.</p> <p>20 Q. But you haven't seen the whole thing?</p> <p>21 A. Correct.</p> <p>22 Q. It is your testimony that Mr. King did</p> <p>23 not show you that at the time?</p> <p>24 A. Correct.</p> <p>25 Q. Without taking the requisite hours to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 go through line by line, could you tell me</p> <p>3 whether the full report that I have placed in</p> <p>4 front of you and marked as Exhibit 554 contains</p> <p>5 more information and specifically more useful</p> <p>6 information in determining the value of LBI's</p> <p>7 open positions at the OCC than the report that</p> <p>8 Mr. King showed you on Sunday the 21st of</p> <p>9 September.</p> <p>10 A. No, it doesn't.</p> <p>11 Q. Why is that?</p> <p>12 A. There is no lots. There is no</p> <p>13 designation of house and customer. Or firm or</p> <p>14 affiliate. There is no designation. It doesn't</p> <p>15 tell you who these positions belong to. It</p> <p>16 doesn't give you the number of lots.</p> <p>17 Q. OK, do you know whether Barclays asked</p> <p>18 for the information about lots, clear value,</p> <p>19 client and house positions that you say is</p> <p>20 missing from this report?</p> <p>21 A. I don't know.</p> <p>22 Q. And you don't know because you weren't</p> <p>23 part of the deal team?</p> <p>24 A. Correct.</p> <p>25 Q. And you have never learned that fact</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 subsequently?</p> <p>3 A. No.</p> <p>4 Q. Did Barclays have any in-house options</p> <p>5 experts at the time of the closing?</p> <p>6 A. I don't know to be honest.</p> <p>7 (Exhibit 555, document Bates stamped</p> <p>8 BCI-EX-(S) 188225 through 270 marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. Thank you, Ms. James. I have handed</p> <p>11 you a document that is marked as Exhibit 555. I</p> <p>12 believe it has actually been marked as 394B.</p> <p>13 But I'm not 100 percent, so I marked it again.</p> <p>14 I will identify this for the record as -- sorry,</p> <p>15 this has not been previously marked as 394B.</p> <p>16 I will identify it for the record as</p> <p>17 an e-mail bearing the Bates range BCI-EX-(S)</p> <p>18 00188225 and it is from Frank Pearn to Tim Stack</p> <p>19 and others. September 21, 2008. Have you seen</p> <p>20 this document before?</p> <p>21 A. Yes.</p> <p>22 Q. Tell me the circumstances in which you</p> <p>23 have seen it, please.?</p> <p>24 MS. BLOOMER: Objection to the extent</p> <p>25 you can answer without revealing privileged</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 information.
3 A. I saw it on Sunday, September 21st.
4 Q. Tell me the circumstances under which
5 you first saw this e-mail sent September 21.
6 A. This was given to me and asked if I
7 could explain how to read the report.
8 Q. Given to you by Mr. King?
9 A. By Mr. Stack.
10 Q. What did you tell Mr. Stack when he
11 asked you if you could read the report?
12 A. I said yes. And I told him how to
13 read it.
14 Q. And how is it that you were able to
15 read this report? Have you seen reports like
16 this before?
17 A. Yes.
18 Q. Under what circumstances had you seen
19 reports like this before?
20 A. This is a report from the OCC. It is
21 the same report they use for their futures as
22 well as for their equity options. It is a
23 standard format. You read it in the same way.
24 Q. If you could direct your attention to
25 your notes, page 1 for a moment. You reference
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1 JAMES
2 Q. Can you tell me where on the report
3 that that 2.1 billion dollars comes from?
4 A. OK, so if you go past the second blue
5 divider and the very first page --
6 Q. Do you have a Bates number, that's the
7 number that appears at the --
8 A. Yes, so BCI-EX-(S) 00188255.
9 Q. And what you have done to get that 2.1
10 billion dollars is total the three entries that
11 appear under the column "face value"?
12 A. That's correct.
13 Q. What does that 2.1 billion dollars
14 represent, Ms. James?
15 A. As per the breakdown, it is a letter
16 of credit, it's cash, and it's government
17 securities that Lehman had with the OCC for
18 their trading.
19 Q. Posted as margin by the -- by Lehman
20 with the OCC?
21 MS. BLOOMER: Objection to form.
22 A. Yes.
23 Q. Is part of that also clearing fund to
24 your knowledge?
25 A. I actually don't know. It doesn't
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1 JAMES
2 in 9/21, 4:07 p.m. e-mail saying e-mail to Tim
3 with OCC reports reflecting 9/19 and 9/22
4 reports?
5 A. That's this.
6 Q. In case there is any confusion in the
7 record, the time stamp on the document marked as
8 555 is in Greenwich mean time. It says 8:07
9 p.m. as opposed to the 4:07 p.m. in your notes?
10 A. Yeah, that's probably right.
11 Q. And is it fair to say, Ms. James, that
12 the information that appears in bullet point
13 form below the line we have just read, first of
14 all, report reflecting 9/19 date showed a total
15 of 2,148 -- I am sorry, 2,148,180,547.47. That
16 figure is drawn from your analysis of this
17 report, correct?
18 A. Correct.
19 Q. And it is a total of what, Ms. James?
20 A. If you actually --
21 MS. BLOOMER: You're asking about the
22 9/19 entry on her notes?
23 MR. OXFORD: Yes, the one that I just
24 read.
25 BY MS. BLOOMER:
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1 JAMES
2 say. So I wouldn't actually know.
3 Q. And for whose options, has Lehman, in
4 this report, posted this collateral?
5 A. It doesn't tell you.
6 Q. Is that information available anywhere
7 in this report?
8 A. No.
9 Q. Is it -- does this report break down
10 the collateral that's posted in categories,
11 whether they are posted for customer positions,
12 firm positions, et cetera?
13 A. For the report, this report dated
14 9/19, no, it does not.
15 Q. So I take from your answer, you have
16 seen another report that does break it down like
17 that? Is that correct?
18 A. (Indicating). The next day.
19 Q. Can you indicate by Bates range?
20 A. So it is BCI-EX-(S) 00188233 through
21 to BCI-EX-(S) 00188254.
22 Q. Which exhibit number are you looking
23 at?
24 A. 555.
25 Q. I see, it is attached to the same
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1 JAMES
2 e-mail?
3 A. Yes.
4 MS. BLOOMER: Whenever you reach a
5 good time for a break, we would like to take
6 a break.
7 MR. OXFORD: We can take a break just
8 now.
9 (Recess)
10 Q. Directing your attention to Bates
11 number 18233 of Exhibit 255. It is the page I
12 think we were looking at just before the break.
13 And it appears to reflect that in the OCC
14 account 074C, collateral of a total of 507
15 million and change was posted by Lehman, is that
16 correct?
17 A. Correct.
18 Q. You read the report the same way as I
19 do?
20 A. Yes.
21 Q. In fact, that number is reflected at
22 the bottom of your chart at the bottom of page I
23 of your notes, isn't it?
24 A. Correct. Yes.
25 Q. And I think I have this, but I just
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1 JAMES
2 that that's Lehman's money?
3 A. No.
4 Q. That Lehman, at least insofar as this
5 account 074C, posted to secure the obligations
6 that relate to Lehman's customers options,
7 correct?
8 A. Correct.
9 Q. My question is a little different. To
10 secure or in return for the posting of this
11 margin, this 507 million dollars in account
12 074C, do you know whether Lehman obtained
13 collateral from customers?
14 MS. BLOOMER: I object to the form of
15 the question. I would also object that this
16 is beyond the scope of this witness'
17 testimony today.
18 A. And I am going to have to say I don't
19 know, because I honestly don't.
20 Q. Who would you ask if you wanted to
21 know the answer to that question?
22 A. This is equity options. I would ask
23 somebody in the Lehman -- probably be their PB
24 world, prime brokerage world.
25 Q. Do you believe Mr. Jones would know
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1 JAMES
2 want to make sure that I understand it, Lehman
3 posted that collateral with the OCC to secure
4 options placed on behalf of customers, correct?
5 A. Correct.
6 Q. And do you know whether or not
7 Lehman's customers also -- to secure Lehman's
8 obligation to the exchange or the posting of
9 this collateral -- also provided Lehman with
10 collateral?
11 MS. BLOOMER: Objection beyond the
12 scope of the 30(b)(6).
13 (Record read)
14 A. I don't, but I'm actually going to do
15 a but, and say in Craig Jones' declaration, he
16 actually states that the money posted at the OCC
17 for all of the business was Lehman's money.
18 Q. Right, I understand that. I
19 appreciate that clarification. Your testimony
20 is the same as Mr. Jones' testimony, right?
21 A. Yes.
22 Q. You don't disagree that the 2.1
23 billion dollars that you have identified as
24 being reflected as posted by Lehman at the OCC
25 in this report Exhibit 555 -- you don't dispute
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1 JAMES
2 the answer?
3 A. He may do. I don't know.
4 Q. What about Mr. Dziemian?
5 A. I'm not sure.
6 Q. If I could direct your attention to
7 the second page of your notes, Ms. James. There
8 is a reference again 9/21, 4:07 p.m. Do you see
9 that, a little more than halfway down?
10 A. Yes.
11 Q. Tim receives an OCC group board
12 activity date 9/22/08? Do you see that?
13 A. Yes.
14 Q. And that reports excess across all
15 accounts of 689 million dollars, correct?
16 A. Yes.
17 Q. When was the first time that you saw
18 the report that you are referencing?
19 A. Sunday, Sunday the 21st of September.
20 Q. Did Mr. Stack give you that?
21 A. Yes, he did.
22 Q. Go off for one second.
23 (Pause)
24 Q. Is that activity the report, the OCC
25 report?
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1 JAMES
2 MS. BLOOMER: Objection, foundation.
3 Q. Is the OCC report that you have
4 referred to Mr. Stack receiving at 4:07 p.m. on
5 the 21st, is that Exhibit 555?
6 A. Yes.
7 Q. It is?
8 A. Yes.
9 Q. And you note below that this exhibit
10 shows EXC across all accounts of 689 million
11 dollars, correct?
12 A. Yes.
13 Q. Can you explain to me what that means?
14 A. From the exchange reports, there is
15 actually a line here that gives you a number
16 with EXC.
17 Q. And EXC refers to excess?
18 A. Yes.
19 MS. BLOOMER: Objection, foundation.
20 Q. And what do you understand excess to
21 mean in this context?
22 A. In this particular context?
23 Q. Yes, the context of this report?
24 A. Right. And in this particular side of
25 the report, because you have to be very
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1 JAMES
2 clear. I'm asking her what she told
3 Mr. Stack.
4 A. This is what I told Mr. Stack.
5 Q. The numbers that are on the page?
6 A. Yes.
7 Q. Thank you.
8 MS. BLOOMER: The numbers that are on
9 which page? I just want to be clear. I'm
10 not clear.
11 Q. The numbers on the page --
12 MS. BLOOMER: The numbers on the page,
13 this page of this report, page Bates
14 numbered 233?
15 THE WITNESS: Yes.
16 MS. BLOOMER: So these particular
17 numbers you told him?
18 THE WITNESS: Yes.
19 MS. BLOOMER: OK. Sorry.
20 Q. That section of the report that starts
21 at 233, do you see that?
22 A. Yes.
23 Q. Do you see that that report goes on
24 for a number of pages through Bates range 254?
25 A. Yup.
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1 JAMES
2 specific, yeah, that means that is money that
3 was placed -- actually money, collateral or LCs
4 that were at the OCC to cover the initial margin
5 requirement. And that's above and beyond the
6 requirement required by the exchange.
7 Q. OK. What do you explain to --
8 withdrawn.
9 Did Mr. Stack ask you to interpret
10 this report?
11 A. Yes.
12 Q. And what did you tell him in response
13 to that request?
14 A. I explained what the numbers were.
15 Q. And those are the numbers that you
16 have in your 30(b)(6) notes breakdown by type
17 Exhibit 552?
18 A. Yes.
19 MS. BLOOMER: Objection to the form of
20 the question. Are you asking whether she
21 can recall now that these are the precise
22 numbers that she explained to him then? Or
23 are you asking her whether these numbers are
24 the same numbers on the page?
25 MR. OXFORD: I think my question was
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1 JAMES
2 Q. And did you discuss with Mr. Stack all
3 of the numbers on this page?
4 A. Yes.
5 Q. These pages between the two Bates
6 ranges?
7 MS. BLOOMER: Please specify which
8 page you are talking about when you asking
9 the questions.
10 Q. Between Bates range 188233 and 188254.
11 A. Yes.
12 Q. And those numbers are which are excess
13 margin and various accounts at the OCC are also
14 reflected under breakdown by type on page 2 of
15 your notes, Exhibit 552, correct?
16 A. That's correct.
17 Q. Do you remember anything else about
18 the discussion with Mr. Stack on the 21st?
19 A. No.
20 Q. What did he say when you gave him this
21 information?
22 A. He said OK. Knowing Tim.
23 Q. Do you know -- you will see, directing
24 your attention to 188233, do you see the report
25 has an activity date at the top? Do you see
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<p>1 JAMES 2 that? 3 A. Yes. 4 Q. That's 9/22/2008. 5 A. Yes. 6 Q. Do you have any understanding of why 7 the activity date on this report was 9/22? 8 A. It was because it was an option 9 weekend, expiry weekend. 10 Q. Can you explain that a little further? 11 A. The third Friday of every month, and 12 especially on the quarter months, is a main 13 option expiry weekend. So the options go off 14 over that weekend. They actually are either 15 exercised or assigned. The weekend of 19th, 21, 16 20 was an option expiry weekend. 17 So the OCC puts out reports on the 18 morning of the Saturday morning which are the 19 regular calls, and then they would do the option 20 exercises and reassignments and issue you a new 21 set of numbers. 22 Q. Does this report fall into the latter 23 category, the new set of numbers that you are 24 talking about? 25 MS. BLOOMER: Objection, no TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 foundation. 3 A. Yes, it does. 4 Q. And the system date that you see just 5 below the activity date, do you see that? 6 A. Um-hm. 7 Q. That system date is 9/20/2008? 8 A. Yes. 9 Q. Do you have an understanding of why 10 the system date is different from the activity 11 date? 12 MS. BLOOMER: Objection, no 13 foundation. 14 A. I believe, it's how the OCC dates 15 their reports. 16 Q. OK. I think this is clear from your 17 prior testimony, but just to be sure, is it your 18 understanding, Ms. James, that this report 19 reflects the Friday mark-to-market close prices 20 in the OCC system? 21 MS. BLOOMER: Objection, 22 mischaracterizes her testimony. 23 A. No. 24 Q. Why not? 25 A. What I don't know is once they have TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 done the option exercises and assignments, is 3 whether they revalue. That, I don't know. 4 Q. Can you explain a little further what 5 do you mean about the option exercises and 6 assignments? 7 A. When you book off an option exercise 8 or assignment, you are taking it out of being a 9 position. So it is no longer an open position. 10 You are actually taking it off the books and 11 there is a value that goes with that. 12 What I don't know is if they use the 13 closing prices of Friday night or if they use 14 the closing prices that have been determined for 15 the exercise and assignment process. 16 Q. Do you have an understanding of how 17 they -- they being the OCC -- determine the 18 closing prices for the exercise and assignment 19 process? 20 MS. BLOOMER: Objection, no 21 foundation. 22 A. No, I don't. 23 Q. So you told Mr. Stack, when he asked 24 you to interpret this report, that this showed 25 that Lehman, as of the date of this report, had TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 an excess of collateral at the OCC of close to 3 700 million dollars, correct? 4 MS. BLOOMER: Objection to the form of 5 the question. I don't think she has ever 6 said that she told Mr. Stack that number in 7 particular. 8 A. Yeah. I told him these are the 9 numbers on the report and how to read them. 10 Q. Did you add it up for Mr. Stack? 11 A. I don't remember, to be honest. 12 Q. You don't remember giving him a total? 13 A. I may have done. 14 Q. I think we covered this earlier. 15 Below the list of numbers, you write, 16 "subsequent knowledge, 9/19/OCC late margin 17 call"? 18 A. Yes. 19 Q. As a 30(b)(6) witness for Barclays, 20 are you able to tell me when Barclays first 21 learned about the late margin call that you have 22 testified about earlier? 23 A. I think within the first two to three 24 weeks after September 22. 25 Q. But that Barclays did not know to your TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 knowledge, and as the 30(b)(6) witness, about
3 that late margin call until after closing,
4 correct?
5 A. Correct.
6 Q. Again, as the 30(b)(6) witness for
7 Barclays, what was Barclays' knowledge of the
8 excess in margin posted at the OCC by Lehman as
9 of the closing of the deal?
10 MS. BLOOMER: Objection to the use of
11 the term "excess."
12 A. Can we just clarify what do you mean?
13 Q. Right. Sure. And I do want to be
14 very clear on this. Your notes reflect, and I
15 think your testimony reflects, that Exhibit 555
16 which you reviewed with Mr. Stack --
17 A. Yup.
18 Q. -- the Sunday before the deal
19 closed --
20 A. Yes.
21 Q. -- shows an excess across all Lehman
22 accounts at OCC --
23 A. Yes.
24 Q. -- of over 689 million dollars?
25 A. Yup, that's the -- yes.
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1 JAMES
2 were. We didn't know the breakdown, we didn't
3 know the volatility of any of those positions
4 that were on on the Sunday.
5 Q. You didn't know the breakdown of what?
6 A. The positions.
7 Q. The underlying option positions that
8 might be long and short Barclays had no
9 information?
10 A. Correct.
11 Q. Did Barclays ask for information about
12 that prior to closing?
13 A. I don't know.
14 MS. BLOOMER: Objection, beyond the
15 scope of the 30(b)(6).
16 Q. We may have covered this earlier. If
17 so, I apologize. Do you know whether or not
18 Barclays posted additional margin in the OCC
19 accounts that it assumed from Lehman in the week
20 following the closing?
21 MS. BLOOMER: Objection, beyond the
22 scope of the 30(b)(6).
23 A. I would certainly assume yes due to
24 the volatility. I think the weeks following, we
25 lost roughly 700 million dollars based on the
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1 JAMES
2 Q. As Barclays 30(b)(6) witness, what was
3 Barclays' knowledge of the excess --
4 A. The knowledge was --
5 Q. Let me finish that.
6 A. Sorry.
7 Q. -- of the excess collateral that
8 Lehman had posted at the OCC over and above the
9 margin requirements of the OCC as at the closing
10 of the deal before the markets opened on
11 September 22, 2008?
12 A. So I -- on the Sunday 21st, when we
13 received this report.
14 Q. Or 7:59 a.m. before the markets
15 opened?
16 A. The only information we had is these
17 were the numbers at the OCC that had been
18 provided. We did not know at that time whether
19 the customers had paid the funds, who the
20 collateral and the excess belonged to.
21 Subsequent to that, based on Craig Jones'
22 testimony, we had found out it was all LBI
23 money. But at that time on Sunday 21st, we did
24 not know.
25 We did not know what the positions
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1 JAMES
2 positions that were there. So yes, they
3 definitely would have posted.
4 Q. You lost 700 million dollars based on
5 which positions?
6 A. The positions that were in the OCC
7 account.
8 Q. Which OCC account? The proprietary
9 ones or all of the them?
10 A. All of them. I mean, the volatility
11 that week was horrendous.
12 Q. Well, I'm confused because I thought
13 you told me earlier that the customers accept
14 the gains and losses for any -- when an option
15 is closed out and there is a gain or loss, that
16 is not something that Barclays assumes
17 responsibilities for; it is the customer's
18 option, correct?
19 A. Correct. These weren't just customer
20 though, these were house as well.
21 Q. I understand that. Maybe we are just
22 talking past each other again. I thought you
23 said Barclays lost 730 million dollars post
24 closing on all of the OCC accounts?
25 MS. BLOOMER: You can look at the
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<p>1 JAMES 2 declaration to confirm what was said in 3 that. She is -- 4 Q. Do you know whether Barclays hedged 5 the risk of assuming the positions that Barclays 6 supposedly lost 730 million dollars on? 7 A. I don't think so, because we didn't 8 know what the positions were. So you can't 9 hedge what you don't know. 10 Q. If you wanted to know for sure whether 11 or not Barclays did hedge this risk of assuming 12 Lehman's positions at the OCC, who would you 13 ask? 14 A. I most likely would go back to Stephen 15 King on the deal team and ask. 16 Q. Ms. James, I am handing you a document 17 that was marked yesterday at Mr. Romain's 18 deposition, Exhibit 546A. Could you take a 19 second, just look at that and let me know if you 20 have seen it before. 21 A. Yes, I have. 22 Q. Can you tell me, please, in which 23 context you have seen? 24 A. I believe it was clarifying some 25 numbers. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Q. Can you be a little bit more specific? 3 MS. BLOOMER: Objection to the form of 4 the question. 5 Q. Did someone give it to you? 6 A. Yeah. 7 Q. Who gave it to you. 8 A. I'm not sure if this is the one that 9 came from Lee. I believe Lee forwarded this to 10 me, Lee Howell. 11 Q. Lee Howell who is the finance person 12 from Barclays? 13 A. Yes. 14 Q. Do you remember when he forwarded that 15 to you? 16 A. This week, I think. 17 Q. Which numbers did Mr. Howell seek to 18 clarify with you? 19 A. It was the cash number. 20 Q. What in particular was Mr. Howell 21 seeking to clarify about that cash number if you 22 remember? 23 A. In conjunction with my declaration, 24 Exhibit 2, where I have a cash figure of 871, I 25 was asked to confirm if -- they have 811, they TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES 2 wanted to know what the difference was and, of 3 course, the difference is they are different 4 value dates. This is as of the 19th. This is 5 as of what we physically received. 6 Q. I remember that testimony. 7 Do you see on the left-hand side of 8 the spreadsheet that's attached to Exhibit if -- 9 first part of Exhibit 546A, there is a reference 10 to domestic exchanges -- sorry, this is a 11 spreadsheet that Mr. Howell sent to you, the one 12 you have in your hand? 13 A. Sorry. 14 Q. On the left-hand side, there is an 15 entry for domestic exchanges. Do you see that? 16 A. Yes. 17 Q. Did you discuss that with Mr. Howell? 18 A. I was asked what it is and it is the 19 CME, it would be the CME exchange. And I said I 20 assume it was, but they put he's -- they put 21 these numbers together. Finance created this. 22 Q. Were you involved IN discussions with 23 finance to help them create this? 24 A. No. 25 Q. And how was it you were able to answer TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES 2 Mr. Howell's question about domestic exchanges? 3 A. Because I was asked what the domestic 4 exchange were. 5 Q. By process of elimination -- 6 A. Yeah. 7 Q. -- you arrived at the CME? 8 A. Correct. 9 Q. Do you have any knowledge of any 10 assets at the CME that were formerly held at 11 Lehman or ran in Lehman's name that were assumed 12 by Barclays in connection with the CME 13 transaction? 14 A. No. 15 Q. You have no information as to why 16 there would be an entry in this spreadsheet -- 17 A. Well, well, this is the customer money 18 at the CME. 19 Q. How is it that you know that's the 20 customer money at the CME? 21 A. Because it is domestic exchanges and 22 it is customer. Domestic exchanges, the 23 customers were trading were the CME clearing 24 house. 25 Q. Did Lehman have any proprietary TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 positions at the CME?
3 A. No.
4 Q. Did Lehman trade for affiliates or
5 place positions at the CME for affiliates?
6 A. At the time we took over on
7 September 22, there was no positions for
8 proprietary or affiliates.
9 Q. So again, by process of elimination,
10 you concluded that these are customer assets?
11 A. Yes.
12 Q. Do you have any understanding as to
13 why there is an entry for assets and an entry
14 for liabilities there? You see that there is a
15 -- there is a debit of 538 million and a credit
16 of a little over 134 million. Do you see that?
17 MS. BLOOMER: Objection to her
18 qualifications to talk about the meaning of
19 these numbers.
20 MR. OXFORD: I'm just trying to lay a
21 foundation.
22 A. I don't know. I don't know. I would
23 be guessing.
24 Q. We don't need to you guess.
25 A. Nope.
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1 JAMES
2 just am not familiar with the names. So if
3 I could have --
4 MR. DAKIS: If you want to go off the
5 record to do a privilege analysis with your
6 client, that's fine. But I don't want to
7 waste time on the record. You will have
8 time after the initial questioning by the
9 other parties is done to ask any follow up
10 questions you have.
11 MS. BLOOMER: I am going to need a
12 moment before we ask questions to be sure
13 this isn't privileged. If we can go off the
14 record. Thank you.
15 MR. DAKIS: Let's go off the record.
16 (Recess)
17 Q. Ms. James, you have in front of you
18 Exhibit 556?
19 A. Yes.
20 Q. You have had a chance to review this
21 document?
22 A. Yup.
23 Q. And your testimony is the same, you
24 don't remember ever seeing this document?
25 A. Nope.
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1 JAMES
2 Q. Thank you.
3 (Exhibit 556, document Bates stamped
4 BCI-EX-(S) 187355, with attachment marked
5 for identification, as of this date.)
6 Q. Ms. James, you have in front of you
7 what I have marked as Exhibit 556 which I will
8 identify for the record as a Barclays-produced
9 briefing memo dated September 15, 2008, which
10 has the Bates range BCI-EX-(S) 0018255 to 257.
11 Have you seen this memorandum before, Ms. James?
12 A. No, I have not.
13 MS. BLOOMER: I would ask if you are
14 going to ask questions about this that you
15 give the witness ample time to review the
16 document carefully.
17 MS. BLOOMER: Take the time to read
18 it.
19 MR. OXFORD: Sure, take all the time
20 you need.
21 MS. BLOOMER: I would like to take a
22 moment if I could to ask the witness a few
23 questions about who is on this e-mail so I
24 can evaluate any potential privilege. I
25 TSG Reporting - Worldwide 877-702-9580

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1 JAMES
2 Q. Who is Alasdair Hodge, please?
3 A. Alasdair, at the time of this -- at
4 this date, was the head of prime services in
5 Barclays.
6 Q. Is he still with Barclays today?
7 A. Yes, he is.
8 Q. What's his position today if you know?
9 A. He has a COO title, but I'm not -- I
10 think it is COO of fixed income and prime?
11 Q. Not of great moment. As head of prime
12 services for Barclays, did Mr. Hodge have
13 responsibility for Lehman -- for, rather,
14 Barclays' futures business?
15 A. Yes, he did.
16 Q. Did he also have any responsibility
17 for Barclays' options business?
18 MS. BLOOMER: Objection, no
19 foundation.
20 A. Yes, equity options in Barclays went
21 into prime.
22 Q. Do you know who the other individuals
23 are on the distribution and cc list? Obviously,
24 we have covered Mr. Stack, we know who he is.
25 If you could take me through each in turn.
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<p>1 JAMES</p> <p>2 A. Carrole Machell was the global head of</p> <p>3 operations. Paul Chapman was the London head of</p> <p>4 operations, Philip Freeborn was the global head</p> <p>5 of IT. Christoph Schwarz was the global head of</p> <p>6 futures IT. I'm not sure of Sarvjeet,</p> <p>7 Sarvjeet's title, but he was in the Treasury</p> <p>8 area. I'm just not sure what level he was or</p> <p>9 is. The same with Harriet Sterling. They are</p> <p>10 both in Treasury in London.</p> <p>11 Stephen Morse is their global head of</p> <p>12 compliance. And Sharon Whitehouse is a senior</p> <p>13 HR person in London. And Joe Logozzo, at this</p> <p>14 time, was COO for futures.</p> <p>15 Q. Has he changed his position then?</p> <p>16 A. Joe is now -- I'm actually not sure.</p> <p>17 Sorry.</p> <p>18 Q. To your knowledge, are all of these</p> <p>19 people still employed by Barclays today?</p> <p>20 A. I'm not sure about Christoph Schwarz.</p> <p>21 Q. The document reads, "As you may have</p> <p>22 heard we are evaluating potential acquisition of</p> <p>23 the Lehman's futures business." Do you see</p> <p>24 that?</p> <p>25 A. Yes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Q. Do you believe that's a reference to</p> <p>3 the same topic that was discussed on your</p> <p>4 meeting on the 15th?</p> <p>5 A. Yes.</p> <p>6 Q. "We need to quickly assess and make a</p> <p>7 decision later today. Attached is a document</p> <p>8 including situational review benefits, risks,</p> <p>9 key transactional requirements and key next</p> <p>10 steps." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "Please review and reply with your</p> <p>13 thoughts and your area's relevant assessments as</p> <p>14 soon as possible."</p> <p>15 Now, it then goes on to say, "Please,</p> <p>16 work with Joe Logozzo and Tim Stack if you have</p> <p>17 any questions/concerns." Do you see that?</p> <p>18 A. Yup.</p> <p>19 Q. This e-mail is sent by Mr. Hodge, 7:42</p> <p>20 Greenwich mean time, in the morning of Tuesday</p> <p>21 the 16th. So that would be 3:42 in the morning</p> <p>22 eastern time, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Now, does this does this refresh your</p> <p>25 recollection about any further discussions you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 may have had with Tim Stack or anybody about the</p> <p>3 acquisition of Lehman's futures business on</p> <p>4 Monday or Tuesday September 15 or 16th, 2008?</p> <p>5 A. When I first came in, we had a</p> <p>6 conversation about the meeting on the Sunday</p> <p>7 which is here.</p> <p>8 Q. The meeting, that's a meeting on a</p> <p>9 Monday?</p> <p>10 A. Right. But this actually talks about</p> <p>11 the conversation on Sunday night that Tim and I</p> <p>12 had with Jeff Jennings and then talks about the</p> <p>13 meeting from the Monday and I'm assuming, I</p> <p>14 don't know, that this document was put together</p> <p>15 by Tim based on the meeting on the Monday.</p> <p>16 Q. Based on your review of this document,</p> <p>17 does this appear to reflect the discussion that</p> <p>18 you had with Mr. Jennings on Sunday night along</p> <p>19 with Mr. Stack and the meeting that you</p> <p>20 participated in on Monday the 15th?</p> <p>21 MS. BLOOMER: Objection to the</p> <p>22 question, it is compound.</p> <p>23 A. This information is what came out of</p> <p>24 the Monday meeting.</p> <p>25 Q. You see under the heading</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 "Transactional benefits and risks," first page</p> <p>3 of the memo, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. There is an entry, benefits to</p> <p>6 Barclays?</p> <p>7 A. Yup.</p> <p>8 Q. It says, "Taking over the LB business</p> <p>9 will allow BarCap to double its business by</p> <p>10 adding annual revenues of approximately 250</p> <p>11 million dollars."</p> <p>12 A. Yes.</p> <p>13 Q. Is that consistent with the discussion</p> <p>14 that you remember from the meeting on the 15th?</p> <p>15 A. Yes.</p> <p>16 Q. Down at the bottom of the page, there</p> <p>17 is an entry, key risk, that's in bold. Do you</p> <p>18 see that?</p> <p>19 A. Yup.</p> <p>20 Q. The memo reads, "Loss of key clients</p> <p>21 due to inability to execute an expedient</p> <p>22 transaction."</p> <p>23 Do you see that?</p> <p>24 A. Yup.</p> <p>25 Q. Does that reflect the discussion, to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 the best of your recollection, of the meeting on
3 September 15th, 2008?

4 MS. BLOOMER: Objection to the form of
5 the question.

6 A. Yes.

7 Q. Did you participate in any
8 discussions, whether at this meeting on the 15th
9 that you have testified about previously and is
10 reflected in Exhibit 556 or otherwise, about the
11 risks or potential liabilities for Barclays in
12 taking over or assuming responsibility for
13 Lehman's futures business?

14 A. There was a lot of meetings the
15 week -- and there is no way I could recall them
16 all.

17 Q. And I understand that. There was a
18 lot going on this week.

19 A. There was.

20 Q. But focusing on my specific question,
21 which is I need to know your recollection, to
22 the extent you have it sitting here today, of
23 any discussions you had with anyone, whether in
24 this meeting that we have talked about before or
25 in any other meeting with anybody about the
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1 JAMES
2 risks to Barclays of taking over Lehman's
3 futures business.

4 A. I can't remember. I'd have to go back
5 and check my e-mails and communications.

6 Q. My question was specific to Barclays'
7 acquisition of the futures business.

8 A. Yes.

9 Q. If I asked the same question with
10 respect to Lehman's options business --

11 A. Was not involved. That wasn't
12 discussed.

13 Q. You have a very clear recollection, it
14 seems, that you don't -- you were not involved
15 in any discussions with anybody about the risks
16 or liabilities that Barclays would run in
17 acquiring Lehman's options business, is that
18 correct?

19 MS. BLOOMER: Objection to the form.

20 A. Sorry.

21 Q. That's a bad question. Let me ask it
22 again. It is correct to say you have a firm
23 recollection that you were not involved in any
24 discussion with anybody prior to the closing of
25 the deal on September 22 about the risks or
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1 JAMES
2 liabilities that Barclays might run in assuming
3 Lehman's options businesses, correct?

4 MS. BLOOMER: Objection to the form of
5 the question.

6 A. No.

7 Q. No, you have no recollection of any
8 such conversations?

9 A. I don't have any recollection of those
10 conversations.

11 MS. BLOOMER: Was the question does
12 she have a recollection or does she have a
13 firm recollection that she did not have any
14 discussions?

15 MR. OXFORD: I'd take either.

16 MS. BLOOMER: Pardon.

17 MR. OXFORD: I'd take either.

18 MS. BLOOMER: Well, I think we need to
19 be clear about which is the question because
20 they are very different questions.

21 MR. OXFORD: The question is clear on
22 the record.

23 MS. BLOOMER: And your follow-up
24 response in this dialog about the question
25 is very unclear.

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1 JAMES

2 MR. DAKIS: If you need to clarify a
3 question he has asked, you can do so at your
4 time at the end to ask follow-up questions.
5 This is wasting time on the record.

6 If the witness doesn't understand the
7 question, the witness can say so. You can
8 object to form. But the speaking objections
9 have gone on all day and it is getting
10 tiresome.

11 MS. BLOOMER: I will make an objection
12 when I need to make an objection. Thank
13 you.

14 MR. DAKIS: The Federal rules say you
15 can make objections to form, but no speaking
16 objections. I ask that you follow the
17 rules.

18 MS. BLOOMER: I believe I am following
19 the rules.

20 Q. OK. You testified earlier in the
21 deposition, Ms. James, about Barclays' decision
22 to guarantee the obligations of Lehman's
23 customers under the acquisition of the futures
24 business. Do you remember that testimony?

25 A. Yes.

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<p>1 JAMES</p> <p>2 Q. Do you remember when Barclays made</p> <p>3 that decision to offer that guarantee?</p> <p>4 A. To the clearinghouse over the</p> <p>5 weekend -- actually, it might have been the</p> <p>6 Friday, the 19th.</p> <p>7 Q. How is it you came to learn that</p> <p>8 Barclays made that decision?</p> <p>9 A. It was in a meeting in Barclays'</p> <p>10 offices.</p> <p>11 Q. Who was in attendance at that meeting?</p> <p>12 A. I believe, if memory serves correct,</p> <p>13 it was Tim Stack, Alexandra Guest, I think</p> <p>14 Joseph Logozzo may have been there and possibly</p> <p>15 Sean Byrne and myself.</p> <p>16 Q. Do you remember what time of day the</p> <p>17 meeting happened?</p> <p>18 A. No.</p> <p>19 Q. Do you remember whether it was a</p> <p>20 business day or a weekend? It seems like there</p> <p>21 may have been a little distinction.</p> <p>22 A. There was no distinction at that time.</p> <p>23 I believe it was the Friday which was the</p> <p>24 business day. So the 19th. Yeah, 19th.</p> <p>25 Q. I think you told me earlier Alex Guest</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 was the compliance officer for Barclays?</p> <p>3 A. That's correct.</p> <p>4 Q. Who made the decision for Barclays to</p> <p>5 offer written guarantees to the exchanges for</p> <p>6 all future obligations for customers?</p> <p>7 MS. BLOOMER: I am going to object to</p> <p>8 the form of the question. I am going to let</p> <p>9 you -- I am going to instruct you not to</p> <p>10 answer any questions here -- which I know he</p> <p>11 is not asking for -- to the extent it</p> <p>12 requires you to expose communications that</p> <p>13 you had with lawyers or discussions</p> <p>14 internally at Barclays concerning the legal</p> <p>15 advice that you received from Barclays'</p> <p>16 attorneys.</p> <p>17 A. OK, sorry, can we --</p> <p>18 Q. Sure, I think you have identified four</p> <p>19 people in the room with you, none of whom has a</p> <p>20 lawyer, and then I had asked the question if you</p> <p>21 knew who made the decision on behalf of Barclays</p> <p>22 to offer written guarantees to the exchanges to</p> <p>23 underwrite futures obligations for Lehman's</p> <p>24 customer business.</p> <p>25 A. In that meeting, it would have been</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Tim Stack. What I don't know is if he then went</p> <p>3 higher up the chain for approval.</p> <p>4 Q. What is your recollection about -- of</p> <p>5 the discussion in that meeting about the topic</p> <p>6 of whether or not Barclays should issue the</p> <p>7 guarantee you have just testified to.?</p> <p>8 MS. BLOOMER: Again, to the extent it</p> <p>9 would require you to disclose information</p> <p>10 that was received in form of attorney</p> <p>11 advice, I am going to instruct you not to</p> <p>12 answer.</p> <p>13 A. Sorry, can we go with the question.</p> <p>14 Q. Can we read back the back.</p> <p>15 (Record read)</p> <p>16 A. I think the conversation, if I am --</p> <p>17 this is from memory and we are talking 18 months</p> <p>18 ago here, whether we would give a bank account</p> <p>19 number to the clearinghouse for them to be able</p> <p>20 to take the margin call on the Monday morning</p> <p>21 due to the filing on the Friday.</p> <p>22 Q. You said the clearinghouse.</p> <p>23 A. Oh, sorry, the CME.</p> <p>24 Q. Was there discussion, in this meeting,</p> <p>25 about providing guarantees of Lehman's futures</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 customers' obligations at any other</p> <p>3 clearinghouse?</p> <p>4 A. No, I think the main topic was the CME</p> <p>5 because that was the largest.</p> <p>6 Q. Do you know whether or not Barclays</p> <p>7 did, in fact, offer guarantees to any other</p> <p>8 exchanges or clearinghouses in connection with</p> <p>9 Barclays' assumption of Lehman's futures</p> <p>10 business?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you tell me what you remember</p> <p>13 about the discussion in that meeting about</p> <p>14 Barclays' decision whether or not to offer an</p> <p>15 unlimited guarantee to CME for Lehman's futures</p> <p>16 customers?</p> <p>17 MS. BLOOMER: I am going to repeat the</p> <p>18 same objections I made last time. She</p> <p>19 shouldn't disclose any discussion about</p> <p>20 legal advice that anyone in the room</p> <p>21 received from attorneys.</p> <p>22 A. It wasn't an unlimited guarantee.</p> <p>23 Q. In what way was it limited?</p> <p>24 A. It was limited to we only guaranteed</p> <p>25 the payment for the Monday morning.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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JAMES

Q. What do you remember about the considerations that factored into that decision as they were discussed at that meeting?

A. I think that the decision was being driven around the filing of LBI and the concern the clearing house would have if the filing had not been completed, where would they get the money from, and of course, the clearing house would have the right to put the customers into default.

Q. Was there any discussion in that meeting about the liabilities that Barclays would be exposed to by issuing this guarantee to CME?

A. No.

Q. Do you recall any discussion outside of this meeting about the liabilities that Barclays would be exposed to by issuing a guarantee to the CME for Lehman's futures obligations for its customer on the Monday, the 22nd of September?

A. Not that I recall.

Q. To your recollection, Ms. James, that decision was made within that meeting to offer TSG Reporting - Worldwide 877-702-9580

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JAMES

the CME this guarantee?

A. Yes.

Q. Do you know whether or not Mr. Stack would have required authority from someone in a superior position to him to offer that guarantee?

A. I would say yes, but I don't know for definite.

Q. And why would you say yes?

A. Because to tie Barclays to that kind of guarantee, I -- you have to have somebody fairly senior agree to do that.

Q. And why do you say that, because of the potential exposure to be significant?

A. Yes. Especially due to the volatility of the markets. And we also had no idea what we were getting.

Q. Is that a reference to your prior testimony that Barclays hadn't done any due diligence on the futures?

A. Correct.

Q. On the futures business that it was considering buying from Lehman?

MS. BLOOMER: Objection to the use of TSG Reporting - Worldwide 877-702-9580

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JAMES

the word "buying" which mischaracterizes her testimony.

A. Yeah, because it is acquiring, not buying.

Q. Do you know whether or not Barclays offered a guarantee of customer obligations at any equity options exchanges or clearinghouses?

A. I don't know.

Q. If I wanted to know the answer to that question, do you know who I would ask?

A. I would assume somebody in the equities option world or maybe Alexander Guest in compliance. Honestly, I don't know.

Q. Who in the equity options role would you ask?

A. I don't know who was running it to be honest.

Q. If I wanted to know whether or not Barclays offered a guarantee to any other futures clearinghouses or exchanges, other than CME, as they did to CME for the customer obligations, who would I ask?

MS. BLOOMER: Objection, time frame, vague.

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JAMES

Q. Again, my question is directed towards the assumption by Barclays of Lehman's customers futures business in September of 2008.

A. That would be a question for our legal counsel.

MR. OXFORD: Off the record.

(Recess)

(Exhibit 557, document Bates stamped BCI-EX-(S)187751 with attachment marked for identification, as of this date.)

Q. Have you had an opportunity, Ms. James, have you had an opportunity to review Exhibit 557?

A. Yes.

Q. For the record, I'll identify it as e-mail from Sean Byrne to you and others at Barclays entitled "Barclays LBI plan sent on Friday, 19th, at 10:50 in the morning eastern."

A. Yes.

Q. Our 2:50 in the afternoon, GMT. Do you recall reviewing this document?

A. I built it.

Q. And can you tell me the context in which you built it?

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<p>1 JAMES</p> <p>2 A. This was put together for the content</p> <p>3 of insuring -- taking, acquiring and moving all</p> <p>4 the futures positions over for customers -- that</p> <p>5 we didn't miss anything.</p> <p>6 Q. At whose direction did you create this</p> <p>7 spreadsheet?</p> <p>8 A. Who ordered me to do it?</p> <p>9 Q. Yes.</p> <p>10 A. Tim Stack.</p> <p>11 Q. Best you can recall, can you ask me --</p> <p>12 can you tell me, rather, what Tim Stack asked</p> <p>13 you to do?</p> <p>14 A. To put together a plan of all the</p> <p>15 things that we needed to make sure we didn't</p> <p>16 miss before taking over on Monday morning.</p> <p>17 Q. And this document is sent around</p> <p>18 internally in Barclays by Sean Byrne rather than</p> <p>19 by you.</p> <p>20 A. Yes.</p> <p>21 Q. Can you tell me why that is?</p> <p>22 A. Because I had so much else going on,</p> <p>23 Sean was my go-for. Is that a nice word to say</p> <p>24 about your boss? Sorry.</p> <p>25 Q. I misunderstood. I thought you</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 reported to Tim Stack. Did you also report to</p> <p>3 Sean Byrne?</p> <p>4 A. Sure, I had dual reporting lines.</p> <p>5 Sean ran the U.S. futures, which I think we</p> <p>6 determined earlier, and Tim was the global head</p> <p>7 of futures. So I, depending on what I was</p> <p>8 doing, I had dual reporting lines.</p> <p>9 Q. I think you did tell me that. Sorry,</p> <p>10 it has been a long day.</p> <p>11 A. It's OK.</p> <p>12 Q. So who actually created this plan</p> <p>13 that's attached to Exhibit 557 or is part of</p> <p>14 557?</p> <p>15 A. I did.</p> <p>16 Q. Would you do it and Sean Byrne's role</p> <p>17 was, as your go-for, was simply to e-mail it</p> <p>18 around?</p> <p>19 A. Yes.</p> <p>20 Q. I don't see any unfamiliar names</p> <p>21 except possibly Richard Cantor. Forgive me if I</p> <p>22 have asked you this, before Richard Cantor's</p> <p>23 role?</p> <p>24 A. Richard Cantor, at this time, was a</p> <p>25 relationship manager in prime brokerage in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 Barclays. And was assigned to help us.</p> <p>3 Q. It doesn't appear from the</p> <p>4 distribution of this e-mail that there were any</p> <p>5 risk management people at Barclays involved in</p> <p>6 this process.</p> <p>7 A. No, there wasn't, not at this time,</p> <p>8 no.</p> <p>9 Q. At what time did risk management</p> <p>10 people from Barclays become involved in the</p> <p>11 process, being the acquisition of Lehman's</p> <p>12 futures business?</p> <p>13 A. I --</p> <p>14 MS. BLOOMER: Objection to the</p> <p>15 foundation and scope of the 30(b)(6).</p> <p>16 A. Can we just clarify that again, when</p> <p>17 it came --</p> <p>18 Q. Sure, maybe I could ask the question a</p> <p>19 different way.</p> <p>20 At any time, to your knowledge, did</p> <p>21 risk management personnel from Barclays become</p> <p>22 involved in discussions about Barclays'</p> <p>23 acquisition of Lehman's futures business?</p> <p>24 MS. BLOOMER: Objection, foundation</p> <p>25 and beyond the scope of the 30(b)(6).</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 A. I don't remember.</p> <p>3 Q. If they had been involved, do you know</p> <p>4 which risk management personnel would have been?</p> <p>5 MS. BLOOMER: Objection to the form of</p> <p>6 the question.</p> <p>7 A. No, no.</p> <p>8 Q. I am going to jump through options for</p> <p>9 a second and then go back, just warning to you.</p> <p>10 Do you know whether or not there were any</p> <p>11 discussions with Barclays or within Barclays'</p> <p>12 risk management personnel about Barclays'</p> <p>13 acquisition of Lehman's options business?</p> <p>14 A. I don't know.</p> <p>15 Q. And you don't know simply because you</p> <p>16 weren't involved in that side of the business?</p> <p>17 A. Correct.</p> <p>18 Q. And you wouldn't presumably then be</p> <p>19 able to tell me if there was such a risk</p> <p>20 management person who that would be, is that</p> <p>21 correct?</p> <p>22 A. Yeah, I would have no idea.</p> <p>23 Q. Thank you. That simplifies the next</p> <p>24 set of questions.</p> <p>25 Is there anything to, looking through</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES</p> <p>2 Exhibit 557, that reflects the management of</p> <p>3 risks that Barclays was running in acquiring</p> <p>4 Lehman's futures business?</p> <p>5 MS. BLOOMER: I will object to the</p> <p>6 form of the question.</p> <p>7 A. No, no, there isn't.</p> <p>8 Q. To your knowledge, Ms. James, were any</p> <p>9 risk management personnel at Barclays involved</p> <p>10 in the acquisition of Lehman's options business</p> <p>11 prior to the closing?</p> <p>12 A. I don't know.</p> <p>13 Q. If you could look at the attachment to</p> <p>14 the e-mail at 557, the sixth page?</p> <p>15 Unfortunately, we don't have Bates numbers for</p> <p>16 this. You see your name appears in the middle</p> <p>17 of the page?</p> <p>18 A. Yup.</p> <p>19 Q. You may, either by memory or being</p> <p>20 able to track it back, are you able to tell me</p> <p>21 what you had assigned yourself responsibility</p> <p>22 for doing in connection with this project?</p> <p>23 MS. BLOOMER: I am going to have to</p> <p>24 object to asking the witness to attempt to</p> <p>25 discern this from the way the spreadsheet is</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 formatted, but she can do her best.</p> <p>3 MR. OXFORD: That is all we can ask of</p> <p>4 anybody.</p> <p>5 A. From reading the way the pages line</p> <p>6 up, and I can't confirm that 100 percent, it</p> <p>7 looks like to actually open the account.</p> <p>8 Q. Just going back to the e-mail,</p> <p>9 Mr. Byrne says, "This is an outline of what was</p> <p>10 discussed yesterday with Lehman." Do you know</p> <p>11 what that is a reference to?</p> <p>12 A. I'm assuming a meeting on Thursday.</p> <p>13 Q. Sitting here today, do you have any</p> <p>14 recollection of a meeting with Lehman on</p> <p>15 Thursday, September 18?</p> <p>16 A. There were meetings. Could I tell you</p> <p>17 which days? No.</p> <p>18 Q. You said earlier that there were many</p> <p>19 discussions during the course of the week from</p> <p>20 the time you got a call on Sunday the 14th</p> <p>21 through closing about the acquisition of</p> <p>22 Lehman's options business, correct?</p> <p>23 A. No.</p> <p>24 MS. BLOOMER: Objection.</p> <p>25 Q. Futures business, sorry, my mistake?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 A. Yes.</p> <p>3 Q. And I understand that you don't</p> <p>4 remember any or many specific conversations</p> <p>5 about that. Did you have conversations with</p> <p>6 your counterparts at Lehman?</p> <p>7 A. Yes. The people on the original</p> <p>8 meeting were the people we spoke to. It was on</p> <p>9 the Monday. And you have the list. They are</p> <p>10 the same people we spoke to during the week.</p> <p>11 Q. OK, that's helpful. Thank you. The</p> <p>12 memo that is dated the 15th of September, that</p> <p>13 identifies -- Exhibit 556 identifies a key risk.</p> <p>14 Do you see that in the bottom of the memo?</p> <p>15 A. Yes.</p> <p>16 Q. Does loss of key clients due to</p> <p>17 inability to execute an expedient transaction,</p> <p>18 we talked about that earlier?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember any discussions with</p> <p>21 anybody, either at Barclays or Lehman, prior to</p> <p>22 the closing as to the risks to Barclays in</p> <p>23 acquiring Lehman's futures business?</p> <p>24 A. High level risks, yes. Specific</p> <p>25 risks, no.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Q. Can you tell me what those high level</p> <p>3 risks were?</p> <p>4 A. The high level risks are the positions</p> <p>5 that you are taking over, the money that you're</p> <p>6 taking over, the volatility, whether there is</p> <p>7 customers in deficit, whether those customers</p> <p>8 haven't paid money, whether Lehman was fully</p> <p>9 seg'd and secured, did we actually have enough</p> <p>10 money, did they have enough money to actually</p> <p>11 fund all the customer positions.</p> <p>12 So the risks are we had no details of</p> <p>13 their business apart from high level</p> <p>14 discussions.</p> <p>15 Q. Taking each of those high level risks</p> <p>16 in turn, Ms. James, you identified the first</p> <p>17 risk as the money you were taking over. Can you</p> <p>18 be a little more specific about what you mean</p> <p>19 when you say there was a high level risk about</p> <p>20 the money Barclays was taking over?</p> <p>21 A. When I'm talking money, I'm talking</p> <p>22 insuring that what should be in the seg. is in</p> <p>23 seg. and that you're actually going to take all</p> <p>24 the bank account, you are going to get all the</p> <p>25 bank accounts that -- what the customers are</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 JAMES</p> <p>2 saying are their balances are actually in fact</p> <p>3 there. So it is money as well as collateral,</p> <p>4 securities. That's what I mean by money.</p> <p>5 Physical cash.</p> <p>6 Q. Was Barclays able to quantify this</p> <p>7 risk?</p> <p>8 A. No.</p> <p>9 Q. Why was Barclays not able to quantify</p> <p>10 the risks?</p> <p>11 A. Because we got none of the details</p> <p>12 prior to the acquisition and only half of them</p> <p>13 after.</p> <p>14 Q. Do you know if Barclays asked for the</p> <p>15 information that would help them quantify these</p> <p>16 risks?</p> <p>17 A. We asked for information that we</p> <p>18 believed to be in the bounds of not breaking any</p> <p>19 NDAs they had with customers, but we never</p> <p>20 actually received anything as far as I remember.</p> <p>21 Q. NDA, nondisclosure agreement?</p> <p>22 A. Yes. Sorry.</p> <p>23 Q. You mentioned the second high level</p> <p>24 risk was volatility. Can you explain a little</p> <p>25 more what you meant by the high level risk of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 volatility in acquiring Lehman's futures</p> <p>3 business?</p> <p>4 A. Due to the volatility in the markets</p> <p>5 at that time, the volatility of the market move</p> <p>6 between Friday when Lehman closed and Barclays</p> <p>7 took over on Monday morning; that positions</p> <p>8 could have moved enough that we didn't have</p> <p>9 enough money and we had no relationships with</p> <p>10 the customers to actually get that money. So</p> <p>11 you're taking the risk of taking over a business</p> <p>12 where the customers decide they are not going to</p> <p>13 pay you, or there was a customer account in</p> <p>14 deficit and went further into deficit.</p> <p>15 Q. Was Lehman -- withdrawn.</p> <p>16 Was Barclays able to quantify the risk</p> <p>17 associated with volatility?</p> <p>18 A. No.</p> <p>19 Q. Did you have any discussions about the</p> <p>20 risk of volatility with anyone that you recall?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Same question for the first risk you</p> <p>23 identified, the financial risk in taking over</p> <p>24 positions when Lehman might not be fully seg.'d</p> <p>25 and secured?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 JAMES</p> <p>2 A. No.</p> <p>3 Q. Sitting here today, you have no</p> <p>4 specific recollection of discussing that with</p> <p>5 anyone?</p> <p>6 A. No, I don't.</p> <p>7 Q. I believe the third risk you</p> <p>8 identified was a risk of customer deficits?</p> <p>9 A. Yes.</p> <p>10 MS. BLOOMER: I didn't have the</p> <p>11 wherewithal to write everything down.</p> <p>12 Q. Can you explain what you meant by the</p> <p>13 high level risk of customer deficits in</p> <p>14 connection with Barclays' acquisition of</p> <p>15 Lehman's futures business?</p> <p>16 A. The risk is that we could have been</p> <p>17 taken over. We did take over accounts where the</p> <p>18 customer had not actually paid their margin</p> <p>19 calls. So when Barclays got the account, the</p> <p>20 account was actually running in a negative</p> <p>21 balance. They were in deficit. They owed</p> <p>22 money.</p> <p>23 Q. Was Barclays able to quantify that</p> <p>24 risk prior to closing?</p> <p>25 A. No.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 JAMES</p> <p>2 Q. Did Barclays ask for information about</p> <p>3 that risk before closing?</p> <p>4 MS. BLOOMER: Objection, beyond the</p> <p>5 scope of the 30(b)(6).</p> <p>6 A. That would actually probably break</p> <p>7 most of the NDAs.</p> <p>8 Q. Does that mean you don't believe so?</p> <p>9 A. No.</p> <p>10 Q. I think I asked a bad question. Let's</p> <p>11 clean this up a little bit.</p> <p>12 To your knowledge, did Barclays ask</p> <p>13 for information that would allow them to</p> <p>14 quantify the risk of customer deficits as you</p> <p>15 described them?</p> <p>16 A. No.</p> <p>17 MS. BLOOMER: I will object as beyond</p> <p>18 the scope of the 30(b)(6).</p> <p>19 Q. The last risk that I noted that you</p> <p>20 identified as a high level risk for Barclays in</p> <p>21 taking over Lehman's futures business was</p> <p>22 whether there would be enough money to fund</p> <p>23 customer positions. Can you explain what you</p> <p>24 meant by that?</p> <p>25 A. I.e. that in Lehman's did not have</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 enough money in the seg. and secured bank
3 accounts to fund their customer positions.
4 Q. Did Barclays ask for information that
5 would allow them to quantify this list? – this
6 risk?
7 MS. BLOOMER: Objection, beyond the
8 scope of the 30(b)(6).
9 A. I don't remember.
10 Q. Who would you have asked if you asked
11 for this information?
12 A. Jeff Jennings.
13 Q. Do you recall receiving information
14 that would have allowed Barclays to quantify the
15 risk of whether or not there was enough money to
16 fund customer positions?
17 A. I don't believe we did.
18 Q. Do you know, Ms. James, whether any
19 documents were created in connection with the
20 issue of risk associated with Barclays'
21 acquisition of the Lehman's futures business?
22 A. Don't know.
23 Q. Do you know what information was
24 provided to upper management in connection with
25 Barclays' decision to acquire Lehman's futures
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1 JAMES
2 A. Off the top of my head, Tim Stack,
3 Alasdair Hodge and whoever Alasdair Hodge goes
4 into.
5 Q. His supervisor, you mean?
6 A. Yeah.
7 (Exhibit 558, document Bates stamped
8 BCI-EX-(S) 153941 through 942 with
9 attachment marked for identification, as of
10 this date.)
11 Q. Ms. James, I have handed you an
12 exhibit marked 558 which is an e-mail from Mark
13 Cox to Kathy Fudali with a copy to you regarding
14 the subject of Barclays bulk transfer. If you
15 would take a moment to look at the e-mail and
16 the attachment to it.
17 My question is going to relate
18 principally to the e-mail, but you are, of
19 course, welcome to take whatever time you need
20 to look at the attachment.
21 A. Yup.
22 Q. Do you have a recollection of this
23 document, Ms. James?
24 A. I don't remember, but I do know what
25 it is.
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1 JAMES
2 business?
3 MS. BLOOMER: Objection to the
4 foundation and beyond the 30(b)(6).
5 A. No.
6 Q. Who at Barclays, in your
7 understanding, would be the person most
8 knowledgeable about Barclays' assessment of the
9 risks and liabilities to Barclays in taking over
10 their Lehman futures business and whether that
11 was an appropriate risk to take or not?
12 MS. BLOOMER: Objection, beyond the
13 scope of the 30(b)(6).
14 A. Can we just clarify which risks and
15 liabilities do you mean?
16 Q. I meant the high level risks and
17 liabilities you have just listed for me. I
18 think you listed four.
19 A. Yup.
20 MS. BLOOMER: For the record, I again
21 object to the scope of the 30(b)(6).
22 A. I would say it would be multiple
23 people.
24 Q. Can you give me the names of the group
25 of people?
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1 JAMES
2 Q. Can you tell me what it is?
3 A. The CME, because Lehman proprietary
4 business defaulted and did not pay their
5 margins, the CME actually put Lehman into the
6 default and sold off their positions. It is a
7 standard policy that the CME uses and they put
8 out to auction all of the house positions that
9 Lehman held.
10 Barclays, in this instance, which is
11 what this is in reference to, the commodity area
12 within Barclays Bank PLC were offered to bid on
13 the portfolio, along with three or four other
14 companies, and that's what this is, Barclays
15 then won that bid.
16 Q. Were you involved in that bidding
17 process?
18 A. No.
19 Q. Why then was this e-mail sent to you
20 about Barclays' bulk transfers?
21 A. The reason being Barclays Bank PLC is
22 the proprietary trader for commodities in
23 Barclays.
24 BCI, which is who I work for, is the
25 FCM. So Barclays Bank PLC doesn't talk directly
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<p style="text-align: right;">Page 246</p> <p>1 JAMES</p> <p>2 with the CME. They talk via the BCI. And for</p> <p>3 the bidding, BCI has to submit the bid on behalf</p> <p>4 of BB PLC and transfer the positions.</p> <p>5 Q. Were you involved in the transfer of</p> <p>6 that bid?</p> <p>7 A. Yes.</p> <p>8 MS. BLOOMER: Transfer of the what?</p> <p>9 A. The bid.</p> <p>10 Q. Did you have any other involvement</p> <p>11 than simply transferring documents from Barclays</p> <p>12 PLC --</p> <p>13 A. No.</p> <p>14 Q. -- to the CME?</p> <p>15 A. No.</p> <p>16 Q. Do you have any understanding of what</p> <p>17 assets and liabilities Barclays PLC purchased?</p> <p>18 A. No.</p> <p>19 Q. Who at Barclays PLC did you deal with</p> <p>20 in connection with this bulk transfer?</p> <p>21 A. Kathy Fudali. She is commodities</p> <p>22 operations.</p> <p>23 Q. OK. That is all for that document</p> <p>24 please.</p> <p>25 (Exhibit 559, document Bates stamped TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 247</p> <p>1 JAMES</p> <p>2 BCI-EX-(S) 154190 marked for identification,</p> <p>3 as of this date.)</p> <p>4 Q. Ms. James, I have handed you a</p> <p>5 document which have marked as Exhibit 559 which</p> <p>6 is an e-mail from Tim Stack to one of your</p> <p>7 colleagues with a copy to you, Saturday,</p> <p>8 September 20, at 7:48 in the evening Greenwich</p> <p>9 mean time, middle of the afternoon eastern.</p> <p>10 A. Yup.</p> <p>11 Q. Do you remember receiving this</p> <p>12 document?</p> <p>13 A. Nope.</p> <p>14 Q. Do you see the subject line is Lehman</p> <p>15 at NDs for 1 p.m. meeting. Do you see that?</p> <p>16 A. Yup.</p> <p>17 Q. Do you recall attending a meeting, the</p> <p>18 original e-mail is on Thursday, September 18</p> <p>19 with Lehman?</p> <p>20 A. That was a phone call, I believe.</p> <p>21 Q. And were the Lehman attendees the</p> <p>22 people on the -- withdrawn.</p> <p>23 What was the subject that have</p> <p>24 meeting?</p> <p>25 A. The high level conversations TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 248</p> <p>1 JAMES</p> <p>2 continuing from the Monday meeting.</p> <p>3 Q. Can you be a little more specific in</p> <p>4 that answer about the high level conversations?</p> <p>5 MS. BLOOMER: Objection to the form of</p> <p>6 the question.</p> <p>7 A. If you go back to 557, there is a lot</p> <p>8 of detail in here about exchanges and most of</p> <p>9 the conversations would have been about what</p> <p>10 exchanges that we need to look at. And that's</p> <p>11 what this is.</p> <p>12 Q. And that's your recollection about the</p> <p>13 call with Lehman, between Lehman and Barclays</p> <p>14 that's referenced in this e-mail?</p> <p>15 A. Yup. I believe so.</p> <p>16 Q. You will see above the first e-mail,</p> <p>17 the next one in the chain is from Tim Stack.?</p> <p>18 MS. BLOOMER: I'm not sure I see the</p> <p>19 second one to Tim Stack, second one looks</p> <p>20 like Mike Macchiavernia. Looking from front</p> <p>21 to back or back to front?</p> <p>22 MR. OXFORD: I am starting at the</p> <p>23 bottom and gone up?</p> <p>24 MS. BLOOMER: Thank you.</p> <p>25 Q. 3:14 p.m. Mr. Stack writes, "Mike can TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 249</p> <p>1 JAMES</p> <p>2 you confirm with Mike Nielsen that all other</p> <p>3 house accounts are flat, in parens, (besides the</p> <p>4 OC-VIX position and CCE/CCFE positions." Do you</p> <p>5 see that?</p> <p>6 A. Yup.</p> <p>7 Q. Do you have any understanding of the</p> <p>8 question Mr. Stack was asking there?</p> <p>9 A. He is asking were there positions in</p> <p>10 the house account or have they been closed out.</p> <p>11 Q. That relates to futures?</p> <p>12 A. Yes.</p> <p>13 Q. And what was the answer that question?</p> <p>14 MS. BLOOMER: Objection, beyond the</p> <p>15 scope of the 30(b)(6).</p> <p>16 A. Mike's response is above. The house</p> <p>17 was instructed ongoing through their report to</p> <p>18 see if that leaves them flat.</p> <p>19 Q. Maybe I am missing something.</p> <p>20 Instruct, is that a technical term within the</p> <p>21 industry?</p> <p>22 A. Yes.</p> <p>23 Q. And if you could translate that for</p> <p>24 me, that means what?</p> <p>25 A. Instruct -- TSG Reporting - Worldwide 877-702-9580</p>

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1 JAMES
2 MS. BLOOMER: Objection, foundation.
3 A. Instruct, instruct means you have to
4 go in and physically close buys versus sells.
5 They don't close automatically.
6 Q. I think we covered this before, but
7 just to tie the loose ends on it, Barclays --
8 sorry, Lehman's house futures business was or
9 was not flat by the time Barclays took it over?
10 A. From what I know now -- not from
11 reading this e-mail -- no, they weren't. That's
12 where we have the fixed positions, CCFA, and as
13 I now know, it was affiliate. Not proprietary
14 positions.
15 Q. Did Barclays have an understanding
16 prior to the closing that Lehman's house futures
17 positions had been closed out?
18 MS. BLOOMER: Objection, beyond the
19 scope of the 30(b)(6).
20 A. No, which I think is why we are
21 asking. But that's an assumption. Sorry.
22 Q. OK. That is all I have for that
23 document.
24 Ms. James, I'm handing you two
25 documents that have previously been marked in
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1 JAMES
2 MS. BLOOMER: Objection.
3 A. I have not claimed the collateral for
4 accounts when no live trades?
5 Q. OK. I think that is what it says. I
6 was actually a little further up and little
7 further to the right.
8 A. Oh.
9 Q. Is that your name there?
10 A. CFO -- yes.
11 Q. Do you recognize this handwriting?
12 A. No.
13 Q. Do you have any reason to -- do you
14 have any understanding of why your name appears
15 in the top right-hand corner?
16 A. Nope.
17 Q. Did Barclays have the information that
18 is contained in these spreadsheets, 404A and
19 405A, at the time of closing?
20 A. No.
21 Q. And that's same for 404A?
22 A. Yes.
23 Q. And 405A?
24 A. Yes.
25 (Exhibit 560, document entitled
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1 JAMES
2 these depositions as Exhibit 404A and 405A.
3 They are single-page printouts of spreadsheets.
4 If you could take a second to look at them and
5 tell me if you have seen them before please?
6 A. Yes, I have.
7 Q. In what context have you seen them?
8 A. Sorry, what do you mean by what
9 context?
10 Q. When did you see them?
11 A. Some time last year.
12 Q. Did someone send them to you?
13 A. Yes.
14 Q. Do you remember who?
15 A. The 405A would have been Sean Byrne or
16 Sean McKenna. And 404A, I don't remember.
17 Q. Why would Sean Byrne or Sean McKenna
18 have sent you 405A?
19 A. Because they were responsible for
20 putting together the list of proprietary
21 positions as of the close.
22 Q. You see in the top right-hand corner
23 of 405A, there is a handwritten notation. Can
24 you tell -- are you able to read what that
25 notation is?
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1 JAMES
2 "Customer Claim Form" marked for
3 identification, as of this date.)
4 Q. Ms. James, I am handing you what has
5 been marked as Exhibit 560, which I will
6 identify -- withdrawn.
7 Can you take a moment to review the
8 document and tell me if you're able to identify
9 it please.
10 A. No.
11 Q. Can I turn your attention to Exhibits
12 E1 and E2?
13 MS. BLOOMER: Is there a Bates stamped
14 version of this?
15 MR. OXFORD: It has not been produced.
16 It is Barclays SIPC claim.
17 MS. BLOOMER: This is January of '09,
18 I think.
19 MR. OXFORD: This is the topics you
20 have all been waiting for.
21 MS. BLOOMER: January 9, OK.
22 BY MR. OXFORD:
23 Q. Now that I have directed your
24 attention to Exhibits E1 and E2.
25 A. Yup.
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1 JAMES
2 Q. Can you tell me what those are,
3 please.
4 A. E1 is the proprietary futures
5 collateral positions as of that acquisition,
6 9/22. And E2 is the foreign broker and money
7 market funds that have not been received in
8 January that we filed the claim for. They are
9 both the claim.
10 Q. Were you involved, Ms. James, in
11 preparing Exhibit E1 and E2?
12 A. Yes.
13 Q. I should identify for the record that
14 Exhibit 560 is Barclays SIPC claim 900005752.
15 Showing you Exhibit E1, can you tell me what
16 your involvement was in preparing this?
17 A. So E1 was prepared in late January and
18 it was prepared by taking 405A and removing the
19 lines that had "N" on them.
20 Q. And you are referring to the last
21 column?
22 A. Yes.
23 Q. Entitled 922 positions, is that
24 correct?
25 A. Correct.
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1 JAMES
2 that we ended up getting the risk of that we had
3 to then go close the positions out. This is all
4 relating to the same information that's in my
5 Exhibit E1 that we had spoken about in my
6 declaration.
7 Q. And it is your understanding that
8 because there was no positions in these three,
9 four -- sorry, four custodian accounts, there
10 was no risk associated with them that Barclays
11 was assuming; therefore, Barclays is not
12 claiming the collateral associated with those
13 accounts?
14 A. Correct.
15 Q. What's the basis for your
16 understanding, Ms. James?
17 MS. BLOOMER: I object to the question
18 and instruct you not to reveal the content
19 of your discussions with counsel.
20 A. I can't answer.
21 Q. Turning your attention to Exhibit E2,
22 and that's E2 which is attached to the SIPC
23 claim in Exhibit 560?
24 A. Yup.
25 Q. It is correct that you prepared this
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1 JAMES
2 Q. What was the reason that entries with
3 the line N in that column were removed from
4 Exhibit E1 in Exhibit 560?
5 MS. BLOOMER: I am going to state an
6 objection for the record and you can answer,
7 but you are not to reveal the substance of
8 your discussions with your counsel.
9 A. It was to file the SIPC claim to just
10 request the money from the brokers where we had
11 positions. The "N" was there were no positions,
12 we didn't claim it, as of September 22.
13 Q. Do you know whether -- withdrawn.
14 Do you mean that if Barclays did not
15 have an appropriate position, then -- at the
16 relevant exchange or custodian, then Barclays
17 was not in the SIPC claim including any
18 collateral associated with that custodian or
19 account?
20 A. For the proprietary business, yes. We
21 didn't assume the risk.
22 Q. You said you didn't assume the risk.
23 Can you explain what you mean by that?
24 A. So on 9/22, when we took over the
25 accounts, the accounts had positions in them
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1 JAMES
2 document, right?
3 A. Yes.
4 Q. Can you tell me how you prepared it?
5 A. I took the custodian and broker
6 statements in January and put the numbers on
7 this sheet, on the spreadsheet.
8 Q. And were these the same custodian
9 broker statements that you used to prepare any
10 of the exhibits to your declaration?
11 A. Exhibit 3. It is actually my note, I
12 cross-referenced them.
13 Q. Your notes make a reference to Exhibit
14 3 being based on December statements.
15 A. Correct.
16 Q. Does that reflect the fact that the
17 information contained in both Exhibit 3 to your
18 declaration and Exhibit E2 to the SIPC claim
19 were based on broker statements of the positions
20 and collateral with each of those brokers with
21 effect from some time in December 2008?
22 A. Correct.
23 MR. OXFORD: Can we go off the record
24 for a second.
25 (Recess)
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JAMES

MR. OXFORD: Ms. James, you will be pleased to know that I have no further questions for you at this time. Thank you for your patience. I don't believe any of the other parties have questions.

MS. CARRERO: No questions for us.

MR. DAKIS: No questions from the committee.

MS. BLOOMER: I would like to ask a couple of clarifying questions if I could. I will be brief.

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JAMES

EXAMINATION BY

MS. BLOOMER:

Q. There were a couple of times -- for the record, Trish Bloomer, Boies Schiller representing Barclays.

There were a couple of times today when you used the term "commingling of funds." I believe, but correct me if I am wrong, but one of those references came when you were discussing customer and house and another reference came when you were discussing affiliate and house. And I would ask you to explain what you mean by commingling of funds in each of those two contexts.

MR. DAKIS: Objection to form, compound.

Q. You can start with the first. When you say commingling of funds customer house or however -- please characterize it in your own way, can you describe what you were talking about?

A. And I misspoke. If I say funds, it should actually be positions.

So in LBIE, in London, had commingled
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JAMES

customer positions with house positions which is, as we spoke earlier in the testimony, they got closed out by the LCH and generated a loss of 20 million pounds.

Q. And in the second context, if you can recall, having to do with affiliates, when you used the term?

A. And in regards to affiliates, it would be, it was the OCC positions, the equity options and it was positions, not cash. So the OC -- commingled OCC equity options for the affiliates with, in customer and with house, but it was the positions, not funds.

MS. BLOOMER: OK, thank you, I have no further questions.

MR. DAKIS: No follow up.

MR. OXFORD: No questions.
(Time Noted: 6:36 p.m.)

ELIZABETH JAMES

Subscribed and sworn to
before me this day
of January, 2010.

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JAMES

INDEX:

WITNESS	EXAM BY:	PAGE:
E. James	Mr. Oxford	6
	Ms. Bloomer	260

EXHIBITS

Exhibit No.	Marked
Exhibit 552 typewritten notes consisting of four pages	6
Exhibit 553 multipage spreadsheet	179
Exhibit 554 e-mail dated 9/19/2008 with attachment	182
Exhibit 555 document Bates stamped BCI-EX-(S) 188225 through 270	185
Exhibit 556 document Bates stamped BCI-EX-(S) 187355, with attachment	211
Exhibit 557 document Bates stamped BCI-EX-(S) 187751 with attachment	229
Exhibit 558 document Bates stamped BCI-EX-(S) 153941 through 942 with attachment	244

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1	JAMES	1	JAMES
2	EXHIBITS	2	
3	Exhibit No. Marked	3	
4	Exhibit 559 document Bates stamped 247	4	CERTIFICATE
5	BCI-EX-(S) 154190	5	STATE OF NEW YORK)
6	Exhibit 560 document entitled "Customer 253	6)ss:
7	Claim Form"	7	COUNTY OF NEW YORK)
8		8	I, MARY F. BOWMAN, a Registered
9		9	Professional Reporter, Certified Realtime
10		10	Reporter, and Notary Public within and for
11		11	the State of New York, do hereby certify:
12		12	That ELIZABETH JAMES, the witness
13		13	whose deposition is hereinbefore set forth,
14		14	was duly sworn by me and that such
15		15	deposition is a true record of the testimony
16		16	given by such witness.
17		17	I further certify that I am not
18		18	related to any of the parties to this action
19		19	by blood or marriage and that I am in no way
20		20	interested in the outcome of this matter.
21		21	In witness whereof, I have hereunto
22		22	set my hand this 14th day of January, 2010.
23		23	
24		24	
25		25	
TSG Reporting - Worldwide 877-702-9580		MARY F. BOWMAN, RPR, CRR	
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1	JAMES		
2	***ERRATA SHEET***		
3	NAME OF CASE: In Re: Lehman Bros.		
4	DATE OF DEPOSITION: 1/14/10		
5	NAME OF WITNESS: ELIZABETH JAMES		
6	Reason codes:		
7	1. To clarify the record.		
8	2. To conform to the facts.		
9	3. To correct transcription errors.		
10	Page ____ Line ____ Reason ____		
11	From ____ to ____		
12	Page ____ Line ____ Reason ____		
13	From ____ to ____		
14	Page ____ Line ____ Reason ____		
15	From ____ to ____		
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17	From ____ to ____		
18	Page ____ Line ____ Reason ____		
19	From ____ to ____		
20	Page ____ Line ____ Reason ____		
21	From ____ to ____		
22			
23			
24	ELIZABETH JAMES		
25			
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BCI EXHIBIT

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al, (Jointly Administered)
Debtors.

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DEPOSITION OF MARLO KARP

New York, New York

January 20, 2010

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 27306

Page 2	Page 3
<p>1 2 3 4 5 January 20, 2010 6 9:45 a.m. 7 8 Deposition of MARLO KARP, held at the 9 offices of Boies, Schiller & Flexner, LLP, 575 10 Lexington Avenue, New York, New York, before 11 Mary F. Bowman, a Registered Professional 12 Reporter, Certified Realtime Reporter, and 13 Notary Public of the State of New York and New 14 Jersey. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: WILLIAM HINE, ESQ. 9 10 BOIES, SCHILLER & FLEXNER, LLP 11 Attorneys for Barclays 12 401 East Las Olas Blvd. 13 Fort Lauderdale, Florida 33301 14 BY: W. TODD THOMAS, ESQ. 15 16 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 17 Attorneys for the Creditors Committee 18 51 Madison Avenue, 22nd Floor 19 New York, New York 10010 20 BY: JAMES C. TECCE, ESQ. 21 22 23 24 25</p>
Page 4	Page 5
<p>1 2 APPEARANCES: 3 4 HUGHES, HUBBARD & REED, LLP 5 Attorneys for the SIPA Trustee and the Witness 6 One Battery Park Plaza 7 New York, New York 10004-1482 8 BY: SETH ROTHMAN, ESQ. 9 FARA TABATABAI, ESQ. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 IT IS HEREBY STIPULATED AND AGREED, by 6 and between the attorneys for the respective 7 parties herein, that filing and sealing be 8 and the same are hereby waived. 9 IT IS FURTHER STIPULATED AND AGREED 10 that all objections, except as to the form 11 of the question, shall be reserved to the 12 time of the trial. 13 14 15 IT IS FURTHER STIPULATED AND AGREED 16 that the within deposition may be sworn to 17 and signed before any officer authorized to 18 administer an oath, with the same force and 19 effect as if signed and sworn to before the 20 Court. 21 22 23 24 25</p>

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1 KARP
2 THE VIDEOGRAPHER: This is the start
3 of tape number one of the videotape
4 deposition of Marlo Karp in the matter In Re
5 Lehman. Today's date is January 20, 2010,
6 at approximately 9:45 a.m.
7 Will the court reporter please swear
8 in the witness.
9 MARLO KARP,
10 called as a witness by the parties,
11 having been duly sworn, testified as follows:
12 EXAMINATION BY
13 MR. THOMAS:
14 Q. Good morning, Mrs. Karp. Would you
15 please state your full name and address for the
16 record?
17 A. Marlo L. Karp, 2 Ashley Place, Towaco,
18 New Jersey, 07082.
19 Q. Have you been deposed before?
20 A. No.
21 Q. Do you have an understanding of how
22 this process works in terms of, I'll be asking
23 questions and the court reporter will be taking
24 down your answers, and your attorney may from
25 time to time have an objection to the form of

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1 KARP
2 educational background?
3 A. I have a BS/BA from Washington
4 University in St. Louis, and I have a master's
5 from Columbia University.
6 Q. And what is the master's in?
7 A. Finance.
8 Q. So are you an accountant?
9 A. Yes, I am.
10 Q. When did you first have any
11 involvement with the Lehman/Barclays
12 transaction?
13 MR. ROTHMAN: Are you asking her
14 personally or Deloitte?
15 Q. That's a good distinction. They may
16 conflate.
17 When did Deloitte first have any
18 involvement with the Barclays/Lehman
19 transaction?
20 A. We received a call from SIPC, either
21 the 15th or 16th of September, asking whether or
22 not Deloitte might be -- have the time and be
23 able to help if Lehman Brothers, Inc. went into
24 liquidation.
25 Q. And was it a -- what was your

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1 KARP
2 the question, after which he makes the
3 objection, you can go ahead and answer the
4 question, unless he instructs you not to, and if
5 at any point in time you're not clear what I am
6 asking you, please ask me to go ahead and
7 rephrase.
8 A. OK.
9 Q. Would you please briefly describe your
10 professional background?
11 A. Sure. I have been with Deloitte since
12 1990, right out of college. I started out in
13 the audit practice for banking and securities
14 and continued in that role until 1995, in the
15 summer, where I joined the regulatory consulting
16 practice and focused more on projects where
17 there were issues where firms had -- brokerage
18 firms had with regulators, and helping them deal
19 with those issues with the regulators.
20 I have also done SIPA liquidations
21 during that time, as well as fraud
22 investigations.
23 Q. And your current position?
24 A. I'm a partner.
25 Q. Can you please briefly describe your

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1 KARP
2 understanding of what the role would be for
3 Deloitte?
4 A. They spoke to John Manley about it,
5 and it was to be the advisors to the trustee and
6 provide bookkeeping services, help with claims.
7 It was typically the role that we play.
8 Sometimes it would involve some forensic
9 analysis, as well.
10 But they weren't clear as to what the
11 role would be, just at that point they just
12 wanted us to know whether or not we would be
13 able to do -- work on the liquidation if it came
14 to fruition.
15 Q. You understand you have been
16 designated as a witness here to give testimony
17 on behalf of Deloitte on various topics?
18 A. Um-hm, yes.
19 Q. And did you personally become involved
20 in any way in the Barclays/Lehman transaction
21 that week of, let's say September 15th to the
22 22nd?
23 A. The transaction itself?
24 Q. Well, in the transaction, and I mean
25 that loosely. I don't mean actually sitting

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KARP

down and typing it up, but in -- were you aware it was going on, the negotiations?

A. We had received a couple phone calls from SIPC as things progressed. As it got closer they wanted to know whether or not we had cleared conflicts in case the liquidation did come to fruition, and about the 18th, some of my partners had had discussions with Jim Giddens, who hadn't yet been appointed trustee, about what the potential role might be and whether or not it was getting close to fruition.

He also shared a draft copy of the APA, which I received as well, just to read through. They had asked whether or not we had any specific questions.

Q. Did you have any questions or comments regarding the APA?

A. I didn't. I believe a couple of my partners responded back with one or two questions, but for the most part they really didn't have many questions, as our role wasn't really defined except to say was anything unclear to us.

Q. If there was something unclear in the

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KARP

contract, you may have raised that?

A. It was purely unclear as if we understood -- if we had any specific questions as to -- that might affect our role, and we didn't have any specific questions regarding our role. That was all we looked at it from.

Q. At any point did anyone from Deloitte provide an analysis of the APA or the purchase agreement?

A. No. We were not asked to do so.

Q. Let me go ahead and show you a document that without the cover has been previously marked, but we will go ahead and mark this as 566.

(Exhibit 566, document Bates stamped DT 303 to 356 marked for identification, as of this date.)

MR. ROTHMAN: Go ahead, look through it.

Q. Does that appear to be the document you referred to as the APA and that Deloitte received on approximately September 18, 2008?

A. The draft that we received had a bunch of markups on it, handwritten notes. So it

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KARP

doesn't appear to be the same.

Q. OK. Does it -- allowing -- and we will try to grab the version with the handwritten notes, but does it otherwise appear to be the same document, allowing for the fact that you may have seen a draft that was initially attached to the motion for the sale order which had handwriting on it?

A. I mean they both said "asset purchase agreement" on them. I don't know if all the -- if everything stayed the same within it.

Q. Did you ever get a different copy or did Deloitte ever receive a different copy of the APA other than that one originally provided on September 18?

A. Yeah. Later on sometime in October, I think we got a final version of the APA with the signed pages.

MR. THOMAS: Counsel, do you know what the -- I am going to go ahead and mark this now even though it has been marked before.

(Exhibit 567, letter dated 9/20/2008 marked for identification, as of this date.)

Q. Showing you a document we have marked

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KARP

as Exhibit 567, do you recognize this document?

A. Yes.

Q. Can you describe what it is, please.

A. I believe it is referred to as the clarification letter.

Q. And did you understand it to revise and amend the original asset purchase agreement?

MR. ROTHMAN: Objection to the form.

A. I understood that it was in addition to the asset purchase agreement. I don't know that it -- I know it was afterwards that may have changed some of the terms.

Q. And is it your understanding that this is part of the deal that the parties consummated on September 22, 2008?

A. That's how it has -- sorry.

MR. ROTHMAN: Go ahead.

A. That's how it has been described to me.

Q. When was the first time you received that document, the clarification letter?

A. It would have been the same time I received the final version of the APA, so early October.

4 (Pages 10 to 13)

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1 KARP
2 Q. And what was the -- why was Deloitte
3 sent a version of the final APA and the
4 clarification letter?
5 MR. ROTHMAN: Let me just caution you
6 not to reveal any conversations or things
7 that you might have learned from counsel
8 concerning that question.
9 A. We generally request documents for our
10 engagements for our file so we understand what's
11 going on. These would be typical documents we
12 would have requested versions of to understand.
13 Q. Was anyone from Deloitte at any of the
14 bankruptcy court hearings related to the
15 Lehman/Barclays transaction in September of
16 2008?
17 A. No.
18 Q. Was Deloitte following those hearings
19 in any way?
20 A. Following, no. I believe we received
21 a phone call at that weekend letting us know
22 that the hearing, that the hearing had gone
23 through, the sale was going to go through, but
24 we were asked not to do anything else at that
25 time.

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1 KARP
2 information about where we could sit, how we
3 would get documents, how we would get books and
4 records.
5 Basically sat there -- it was an
6 organizational meeting at that point, and that
7 is all we were asked to do for pretty much that
8 first week, was just try to get organized, start
9 getting teams organized, people, because we were
10 asked to not do anything while the customer
11 transfers were going on.
12 Q. What was the goal of the getting
13 organized? Getting organized to do what?
14 A. To proceed with the SIPA liquidation
15 process, so how would we do claims, how would we
16 marshal the assets of the firm, just build on --
17 what teams would work on what with which
18 attorneys from Hughes Hubbard, and that was --
19 and where would we sit, because it would be a
20 large group of people.
21 Q. When was the first time Deloitte had
22 conversations with someone other than Hughes
23 Hubbard or the trustee concerning the
24 transaction?
25 A. We received a phone call from SIPC

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1 KARP
2 Q. Is that a phone call you received
3 personally?
4 A. No.
5 Q. Was -- was Deloitte aware that the
6 clarification letter was being finalized over
7 that weekend of the 20th and 21st over at Weil
8 Gotshal?
9 A. I don't know when we knew about the
10 clarification letter.
11 Q. Was anyone from Deloitte ever over at
12 Weil or Lehman prior to September 22?
13 A. No.
14 Q. So you were, Deloitte was relying on
15 reports from others in terms of what was going
16 on with the negotiation of the deal, the
17 finalization of the deal?
18 A. Yes.
19 Q. And what was the -- what work did
20 Deloitte do in that month of September?
21 A. We attended a meeting on the 22nd at
22 75 -- the 745 building, the building with the
23 trustee, his counsel, Weil Gotshal, a lot of
24 attorneys, a lot of former Lehman personnel
25 there as well, where we started getting some

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1 KARP
2 back on the 15th or 16th about the potential for
3 it, and John Manley had subsequent conversations
4 with SIPC once or twice during that week as it
5 became clear it might actually go into
6 liquidation, to find out if there were
7 conflicts.
8 Q. Did Deloitte ever meet with Weil
9 Gotshal to discuss the deal?
10 A. No.
11 Q. Do you know if they met with Houlihan?
12 A. No.
13 Q. No, you don't know or --
14 A. No, they did not.
15 Q. Did it ever become important to
16 Deloitte's work to understand what assets and
17 liabilities had been transferred as part of the
18 Lehman Barclays sale transaction and what
19 hadn't?
20 A. Not in that context. It became
21 important to understand what assets were under
22 the trustee's control in order to begin the
23 customer claim process, which is where our focus
24 was.
25 Q. To understand what assets were still

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KARP

under the trustee's control, was it important to understand which of LBI's assets had been transferred over to Barclays?

A. It was part of the -- it was part of the understanding, but our first priority was to get a handle on what assets were -- what cash securities and other assets were under the trustee's control or we needed to get under the trustee's control. That was our primary responsibility.

Q. So you were -- the goal was more in terms of establishing what the trustee still controlled, but one part of achieving that goal was understanding what had been transferred in the purchase agreement and what had been retained, correct?

MR. ROTHMAN: Objection to the form.

You can answer the question.

A. That became the next step of the process, but we didn't have access to the books and records to validate a lot of that information, so it became more important for us to make sure that we could get all the assets that were -- that we thought belonged to LBI

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KARP

closing, all securities and other assets held by purchaser under the September 18, 2008 repurchase agreement, among purchaser and/or its affiliates and LBI and/or its affiliates and the Bank of New York as collateral agent (the Barclays repurchase agreement), shall be deemed to constitute part of the purchased assets in accordance with paragraph 1A2 above."

Do you see that language?

A. Yes.

Q. Was it your understanding that as part of the Barclays sale transaction, Barclays was acquiring all of the collateral associated with what was the Fed repo?

MR. ROTHMAN: Objection to form.

I don't know if you laid enough of a foundation here, but she has testified she had nothing to do with the negotiation or the drafting of this agreement, so if all you're asking her -- I guess I am not clear whether you are asking her independent of the agreement or what she understood as she read it in October. I don't think you're entitled to her interpretation of it in

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KARP

under the trustee's control first, and as we got access we would then proceed to see what was left, what was still owed to customers.

Q. When Deloitte received the clarification letter in early October, did it review the clarification letter?

A. I know I read through parts of it. I would -- I don't know about the others.

Q. Let me ask you to look at 567 and ask about a few sections that are -- on the first page, see where it says "purchased assets, excluded assets"?

A. Yes.

Q. And then subparagraph 2 there, capital A, it says, "The securities owned by LBI and transferred to purchaser or its affiliates under the Barclays repurchase agreement as defined below, as specified on Schedule A, previously delivered by seller and accepted by purchaser." Do you see that?

A. Yes.

Q. And if you flip to page 5, paragraph 13, where it's entitled "Barclays Repurchase Agreement," it says, "Effective at

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KARP

October.

MR. THOMAS: The objection I guess is to foundation.

I am asking based upon her receiving it and having read it and the plain language of it. And if she had some different understanding, that's fine. But this relates to what assets went over and what assets didn't, what assets were under the control of the LBI. So that's the basis for it.

MR. ROTHMAN: I will give you a little leeway on this, but she is not an expert, and she had no personal involvement with drafting or creating this document. So it is not really fair to ask her to just interpret for you her view.

MR. THOMAS: We are getting into kind of a long speaking, coaching objection, and I understand the objection is to foundation. I think there is some foundation if you read the plain language of the letter.

Q. So again, the question is, did you understand that as part of the sale transaction,

6 (Pages 18 to 21)

Page 22

1 KARP
2 Barclays was acquiring all of the collateral
3 associated with the Fed repo?
4 A. I didn't understand that as part of
5 this clarification letter. It had been told to
6 me through counsel, the trustee's counsel.
7 MR. ROTHMAN: Please don't reveal
8 things that have been told to you by the
9 lawyers.
10 THE WITNESS: OK.
11 Q. Reading this language, is that how you
12 understand these terms, that Barclays is to
13 receive the collateral associated with what was
14 the Fed repo?
15 MR. ROTHMAN: Objection to the form.
16 A. I'm not an attorney, but reading this,
17 I mean it says purchased assets include the
18 collateral. And it defines the collateral here.
19 So --
20 Q. So it is pretty clear that they get
21 that collateral?
22 MR. ROTHMAN: Objection to the form.
23 It is not a proper question to ask her. It
24 really isn't.
25 MR. THOMAS: Counsel, we can't have

Page 24

1 KARP
2 Do you see that language?
3 A. Um-hm, yes.
4 Q. Did you understand as part of the
5 sales transaction, Barclays was acquiring
6 clearance box assets?
7 MR. ROTHMAN: Objection to the form.
8 Again, I caution you not to reveal
9 information that you received from the
10 lawyers.
11 A. Then I can't really talk about it.
12 Q. Just reading this document, not based
13 on what lawyers may have said, is that how you
14 would interpret capital B of subsection 2, that
15 Barclays was acquiring clearance box assets?
16 MR. ROTHMAN: Objection to the form.
17 Again, if you can't answer that
18 question because of the things that lawyers
19 have already told you, then please don't
20 answer the question.
21 A. All my discussions were with attorneys
22 on this.
23 Q. Did you read that when you received
24 the clarification letter in early October?
25 A. I may have. I honestly don't

Page 23

1 KARP
2 these long speaking objections in violation
3 of the federal rules. OK. Just a clear
4 statement. I understand "objection to form
5 based on lack of foundation."
6 MR. ROTHMAN: You need to ask proper
7 questions of the witness.
8 MR. THOMAS: Those are proper
9 questions.
10 MR. ROTHMAN: They are not.
11 MR. THOMAS: We can argue that later.
12 What is not proper is for you to try to
13 coach the witness into answering a certain
14 way while I am asking the question.
15 MR. ROTHMAN: I am not doing that.
16 MR. THOMAS: We can argue about
17 foundation later, but the rules are very
18 clear. Objections are to be limited.
19 Q. Let me ask you to turn back to page 1,
20 subsection 2, part capital B, where it says,
21 "Such securities and other assets in LBI's
22 clearance boxes as of the time of the closing
23 which at the close of business on September 21,
24 2008 were specified -- were as specified on
25 Schedule B."

Page 25

1 KARP
2 remember.
3 Q. So independent, do you have an
4 understanding -- can you read that language and
5 tell me independently how you interpret it?
6 MR. ROTHMAN: Sitting here today?
7 MR. THOMAS: Yeah, independent of --
8 MR. ROTHMAN: I'm not going to let her
9 do that. She has already talked to
10 attorneys about it. It has already infected
11 whatever she is going to think about it as
12 she reads it now.
13 It's not -- we are not here to have
14 her sit here and read documents as of today.
15 MR. THOMAS: Well --
16 MR. ROTHMAN: That's not -- you are
17 here to elicit facts from her.
18 MR. THOMAS: You are really
19 obstructing the deposition. You are really
20 doing a lot of coaching and speaking. I
21 really prefer you just do it the way the
22 rules provide.
23 If you are going to instruct the
24 witness not to answer a question, that's
25 fine. We'll just build it into the motion.

Page 26	Page 27
<p>1 KARP</p> <p>2 Q. If you would turn to the page -- the</p> <p>3 second page and subpart capital C.</p> <p>4 "Exchange-traded derivatives." Do you see where</p> <p>5 it says, "Exchange-traded derivatives and any</p> <p>6 property that may be held to secure obligations</p> <p>7 under such derivatives"?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if when you received</p> <p>10 this document back in October and reviewed it,</p> <p>11 that you understood that exchange-traded</p> <p>12 derivatives and any property that may be held to</p> <p>13 secure obligations under such derivatives were</p> <p>14 part of the assets being transferred to</p> <p>15 Barclays?</p> <p>16 MR. ROTHMAN: Objection to the form.</p> <p>17 A. I don't remember reading it and</p> <p>18 understanding. What I would have understood</p> <p>19 came from attorneys.</p> <p>20 Q. Have you ever had -- have you ever</p> <p>21 believed that the exchange-traded derivatives</p> <p>22 were not transferred as far as this sale</p> <p>23 transaction?</p> <p>24 MR. ROTHMAN: Objection to the form.</p> <p>25 Again, please don't reveal anything</p>	<p>1 KARP</p> <p>2 you learned solely from attorneys.</p> <p>3 A. Were not transferred as in not</p> <p>4 physically transferred or --</p> <p>5 Q. Were not transferred pursuant to the</p> <p>6 agreement.</p> <p>7 A. Could you define exchange-traded</p> <p>8 derivatives for me, as to what that includes?</p> <p>9 Q. OK. Well, are you familiar with that</p> <p>10 term?</p> <p>11 A. I am, but I've heard it used different</p> <p>12 ways, and so I'm -- I just want to make sure</p> <p>13 that I'm talking about the right --</p> <p>14 Q. How do you use the term</p> <p>15 "exchange-traded derivatives"?</p> <p>16 A. I would -- my interpretation is</p> <p>17 futures and options on futures.</p> <p>18 Q. Using that definition, has there ever</p> <p>19 been any question in your mind that those</p> <p>20 exchange-traded derivatives as you just defined</p> <p>21 them were transferred to Barclays as part of the</p> <p>22 sale transaction?</p> <p>23 A. My understanding from a meeting where</p> <p>24 the CFTC participated was that futures, the</p> <p>25 futures business related to customers was</p>
Page 28	Page 29
<p>1 KARP</p> <p>2 transferred to Barclays.</p> <p>3 Q. And what was your understanding with</p> <p>4 respect to the options business from that</p> <p>5 meeting?</p> <p>6 A. The options --</p> <p>7 MR. ROTHMAN: Objection to form.</p> <p>8 A. The options, you mean the OCC options</p> <p>9 or the options on futures?</p> <p>10 Q. OCC options.</p> <p>11 A. My understanding from the -- for the</p> <p>12 options was that options were being transferred</p> <p>13 in total to Barclays.</p> <p>14 Q. Turning back to the first exhibit we</p> <p>15 looked at, 566, if you turn to the section</p> <p>16 "Definition of Purchased Assets," page 6 of the</p> <p>17 document, Bates stamped DT 313, do you see it</p> <p>18 has a list of purchased assets?</p> <p>19 A. Yes.</p> <p>20 Q. Did Deloitte at any time attempt to</p> <p>21 value any of the assets listed under "purchased</p> <p>22 assets"?</p> <p>23 A. The only time we attempted to value --</p> <p>24 sorry, we did not attempt to value anything</p> <p>25 related to this listing.</p>	<p>1 KARP</p> <p>2 Q. Can I ask what -- it seems like you</p> <p>3 were clarifying your language. Was there</p> <p>4 something you were going to say before that?</p> <p>5 A. We have been in the process of</p> <p>6 creating a draft balance sheet, but Deloitte</p> <p>7 hasn't been doing the valuations.</p> <p>8 Q. Who has been doing the valuations for</p> <p>9 the draft balance sheet?</p> <p>10 A. The valuations have been coming from</p> <p>11 third-party sources and Barclays.</p> <p>12 Q. What were the third-party sources?</p> <p>13 A. They are publicly available sources.</p> <p>14 The two that I remember are Bloomberg and IDSI.</p> <p>15 Q. Is that work still going on?</p> <p>16 A. Yes.</p> <p>17 Q. When did Deloitte first work on in any</p> <p>18 way a balance sheet for BLI?</p> <p>19 A. It started in late '08. We did not</p> <p>20 have access to the books and records until</p> <p>21 around that time to be able to get the details</p> <p>22 to start creating a balance sheet.</p> <p>23 Q. What was the purpose of creating a</p> <p>24 balance sheet?</p> <p>25 A. To determine what the assets and</p>

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1 KARP
2 liabilities existed as of 9/19/08, the date of
3 liquidation.
4 Q. And Deloitte is still working on that
5 balance sheet today?
6 A. Yes.
7 Q. After you got the books and so forth,
8 records, why is it taking so long to do the
9 balance sheet?
10 MR. ROTHMAN: Objection to the form.
11 A. There is a lot of reconciliation work
12 that had to be done in order to create the
13 balance sheet.
14 Q. And just explain in a little more
15 detail the type of reconciliation work.
16 A. Yes. There were over 200,000 failed
17 transactions between LBI and LBIE that need to
18 be reconciled.
19 There were, I believe, 10, 11 thousand
20 cash breaks related to the bank accounts.
21 We had difficulties in obtaining
22 statements from depositories where securities
23 were being held. All that took time to get the
24 statements and the information and to begin
25 reconciling the data.

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1 KARP
2 MR. ROTHMAN: Objection to the form.
3 A. We didn't -- we didn't agree or
4 disagree. That was -- the agreement was to rely
5 upon Barclays' pricing.
6 Q. Let me ask more specifically about a
7 couple of these items. First, do you know as of
8 September 16 or thereabouts the amount of
9 retained cash that LBI had?
10 A. No.
11 Q. And when I say "you," I mean Deloitte,
12 not just yourself.
13 A. No, we didn't.
14 Q. Just so I understand, Deloitte has
15 never attempted to identify or figure out the
16 value of these items listed under the purchased
17 assets?
18 A. No.
19 Q. And that would include efforts even
20 using some other third parties to help with
21 valuation? Deloitte has never made that effort
22 to try to identify the value of these items?
23 MR. ROTHMAN: Objection to the form.
24 A. Not these specific -- not -- we -- the
25 only effort we made from putting together

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1 KARP
2 And in addition, our ability to access
3 the data came in spurts, as we worked through
4 different issues with Barclays on access.
5 Q. Was it difficult to value some of
6 LBI's assets?
7 MR. ROTHMAN: Objection to the form.
8 Objection -- go ahead.
9 A. We didn't value the assets.
10 Q. Was it difficult to obtain valuations
11 of the assets that you believed, that Deloitte
12 believed were reliable valuations?
13 MR. ROTHMAN: Objection to form.
14 A. We didn't say one way or the other
15 whether or not the valuations were reliable.
16 That determination was not made by Deloitte.
17 Q. Who made that determination?
18 A. That -- Barclays provided services by
19 which their price verification group looked at
20 the valuations that were provided and questioned
21 whether or not, whether or not -- they did their
22 questioning methodologies to determine whether
23 or not the valuation methods were appropriate.
24 Q. Did Deloitte agree or disagree with
25 Barclays' determinations?

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1 KARP
2 information was for a balance sheet. We did not
3 work off this document for these items.
4 Q. OK. Did Deloitte, either itself or --
5 when I ask if Deloitte values something, I am
6 going to include efforts where Deloitte might
7 rely on some third party to help establish that
8 value. Understood?
9 A. Yes.
10 Q. Did Deloitte ever attempt to value the
11 assets in subpart B of the purchased assets, the
12 deposits referred there? As of -- value them as
13 of September 16, 2008, or anytime that week?
14 A. No.
15 Q. Same question for subpart C, the
16 transferred real property leases.
17 A. No.
18 Q. Now, subpart D refers to a list of
19 securities and other assets. Do you see that?
20 A. Yes.
21 Q. Has Deloitte ever attempted to value
22 as of September 16 or anytime that week the
23 assets in subpart D?
24 A. To the extent that those assets would
25 be there on 9/19, they would have been part of

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1 KARP
2 the value, the balance sheet that was prepared
3 for -- in that inventory section.
4 Q. Does Deloitte know what precise assets
5 are being referred to in subpart D?
6 A. No.
7 Q. Is there any list of CUSIPs, to
8 Deloitte's knowledge, that identifies what
9 assets -- list of CUSIPs or other list or
10 document that identifies exactly what are the
11 assets in subpart D?
12 A. Not that total to 70 billion -- that
13 total to 70 billion, we don't have that list.
14 Q. What other list do you have that might
15 relate to subpart D?
16 A. We have a list of firm inventory off
17 the stock record as of 9/19.
18 Q. But Deloitte doesn't have an
19 understanding of how that list relates to the
20 category of items in subpart D?
21 A. No.
22 Q. To your knowledge, does anyone have a
23 list of the securities and other assets being
24 described in subpart D?
25 A. Not to my knowledge.

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1 KARP
2 Q. Has the value of those items on the
3 list been updated at any point since
4 September 16, if you know?
5 MR. ROTHMAN: Objection to the form.
6 A. The items don't exist.
7 Q. What happened to the items?
8 A. DTC's FICC division stepped in and
9 liquidated the securities. Or closed them out.
10 Q. And when did that happen?
11 A. My understanding is that they stepped
12 in that week right after bankruptcy, and I'm not
13 sure how long the process continued. We are
14 still waiting for information from DTC on all
15 the closeouts.
16 Q. And if I went through the rest of
17 these lists, would Deloitte have any idea as to
18 the value of these items as of September 16,
19 2008, or thereabouts?
20 A. No.
21 Q. Do you know if the trustee has any
22 further knowledge about the value of these items
23 listed under "Purchased Assets"?
24 MR. ROTHMAN: Again, let me just
25 caution you not to reveal information you

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1 KARP
2 Q. Does Deloitte have any idea of whether
3 the assets referenced in subpart D are, or were
4 worth 70 billion dollars or more or less as of
5 September 16?
6 A. No.
7 Q. Has Deloitte attempted to figure that
8 out?
9 A. No.
10 Q. In subpart E, it refers to 50 percent
11 of each position in the residential real estate
12 mortgage security. Do you see that?
13 A. Yes.
14 Q. Has Deloitte ever attempted to value
15 those positions? I am going to say ever, at any
16 time?
17 A. No.
18 Q. Is Deloitte aware of what assets
19 exactly are being referred to here?
20 A. We believe it refers to the TBA
21 mortgages.
22 Q. Is there a list of those mortgages?
23 A. Yes.
24 Q. Is that a list that Deloitte has?
25 A. Yes.

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1 KARP
2 may have learned solely from lawyers.
3 Q. You can give a yes or no to begin
4 with.
5 A. I don't know.
6 Q. Now, you referenced an effort by
7 Deloitte to establish some valuations as of
8 September 19, 2008. Is that correct?
9 MR. ROTHMAN: Objection,
10 mischaracterizes her testimony.
11 A. We prepared a balance sheet, but we
12 did not do the valuations.
13 Q. But you attempted to gather
14 valuations, correct?
15 A. Yes.
16 Q. And can you describe the items that
17 you attempted to get valuations for?
18 A. It would have been market value of
19 assets and liabilities on the balance sheet to
20 the extent that these required outside market
21 values.
22 Q. What did Deloitte do to first
23 establish what assets were still -- still
24 belonged to LBI after the Barclays transaction?
25 MR. ROTHMAN: Objection to form.

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KARP

A. We prepared a balance sheet as of 9/19, irrespective of any transaction, and obtained bank statements and depository statements to reconcile to 9/19.

Q. Did that include obtaining a list of securities that were posted earlier in the week with the Fed as part of the Fed repo?

A. Not for the 9/19 balance sheet, it did not. It was only what existed at that date.

Q. So you're familiar with the collateral that was supposed to go to Barclays, that was part of the repo that was supposed to go to Barclays in return for Barclays putting up 45 billion dollars?

A. I understand that there was a Barclays repo transaction.

Q. And the securities, for the purposes of your 9/19 balance sheet, how were the repo securities treated as still belonging to LBI or not belonging to LBI?

MR. ROTHMAN: Objection to the form.

A. We would show a repo transaction. So it would be in a liability.

Q. And the liability at that point, the

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KARP

liability would still be -- so the securities, the assets would still be on LBI's books but they would owe the 45 billion dollars; is that right?

A. Yeah. A repo transaction would be mark to market, so it wouldn't show 45 billion, but yes, in effect.

Q. How does it -- what does that mean, mark to market?

A. The securities are shown at the market value of the collateral versus the cash.

Q. OK. And what -- how did you determine what the market value was of those securities?

MR. ROTHMAN: Objection to the form.

A. The market value would have come -- excuse me -- would have come from the -- from Barclays.

Q. And do you recall the figure, the market value they identified for those securities?

A. I believe it was -- it was in the -- around 42, 43 billion was the market value of the securities delivered, plus there was some cash.

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KARP

Q. Do you know if that was, Barclays was identifying actual market value, or that was just the nominal -- the marks that had been on those securities placed by others?

A. I don't know.

Q. Are you aware of Barclays raising questions that week as to the actual realizable value of some of those securities of LBI's?

A. Which week?

Q. That week of September 16th.

A. I wasn't involved that week.

Q. But I mean, by the 18th, you had reviewed the asset purchase agreement, Deloitte was at least doing something in -- so during -- putting aside whether you were involved at the time, are you aware that during that week, Barclays raised an issue concerning the actual market values of the securities of LBI, that LBI had put up for the repo?

MR. ROTHMAN: Objection to the form.

A. I would have learned any of that from counsel. Any discussion would have been with counsel.

Q. Let me show you a document we will

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mark as 568. Do you recognize this as an e-mail from Vikram Ramani to you and others dated November 12, 2008?

A. Yes.

(Exhibit 568, document Bates stamped DT 495 marked for identification, as of this date.)

Q. And who is Vikram Ramani?

A. He is a member of my team.

Q. And do you see where it says, "Can you send me the list of securities that make up the 42.3 billion collateral that was delivered to Barclays via Lehman"?

A. Yes.

Q. What was the purpose of this work that Deloitte was doing at this time?

A. This work was in preparation for the December settlement that was eventually filed.

Q. What was Deloitte's role with respect to the December settlement?

A. Our role was to create a time line of the repo transaction for how securities moved, and to document it.

Q. Was it to make a recommendation with

11 (Pages 38 to 41)

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1 KARP
2 respect to the settlement?
3 MR. ROTHMAN: Objection to form.
4 That's a yes or no question.
5 Q. Yes.
6 A. No.
7 Q. Do you know if you received this list
8 that is being requested here, the list of
9 securities that made up the 42.3?
10 A. Yes.
11 Q. So you did receive it?
12 A. Yes.
13 Q. And after receiving it, what did
14 Deloitte do with it?
15 A. We compared it to the books and
16 records of LBI.
17 Q. For what purpose?
18 A. To see if we could see that that had
19 been recorded.
20 Q. I'm sorry, what does that mean, been
21 recorded?
22 A. That the records reflected that these
23 securities had been moved as part of a repo
24 transaction with Barclays.
25 Q. So Deloitte was just confirming that

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1 KARP
2 which resulted in other substitutions.
3 Q. Do you know that rough total volume of
4 substitutions that occurred?
5 A. Our rough estimate was approximately
6 about 9 billion out of the 42.3 billion, but at
7 the time we did it, the records weren't fully up
8 to date and we didn't rerun that since.
9 Q. Was it your understanding that the
10 collateral that was supposed to be transferred
11 to Barclays on that Thursday or Friday had
12 nominal marks placed on it by someone, in the
13 value -- in the range of roughly 49.7 billion?
14 MR. ROTHMAN: Objection to the form.
15 A. I'm sorry, for what was transferred?
16 Q. To what was supposed to be transferred
17 to Barclays? Do you recall that -- strike that.
18 Do you recall that there was kind of a
19 missing 7 billion dollars?
20 A. In my meetings with Barclays and with
21 JP Morgan, we had been told by both parties that
22 there was a gap of 7 billion that was expected
23 to be delivered.
24 Q. And what was your understanding of how
25 that gap occurred?

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1 KARP
2 those securities had actually moved to Barclays?
3 A. That the records reflected that that
4 movement had occurred.
5 Q. Was there any other purpose in looking
6 at the securities that had already moved in
7 connection with the settlement agreement?
8 A. We also compared it to the list of the
9 original securities pledged under the repo that
10 LBI had with the Federal Reserve, to see if they
11 were the same securities.
12 Q. And what did you find out?
13 A. We found out that there were
14 differences, that there were -- it was not the
15 same pool of securities.
16 Q. And did you obtain an understanding as
17 to why it was a different pool?
18 A. We had discussions with JPMorgan Chase
19 where part of the original 50 billion could not
20 move because it was part of a GCS program, which
21 restricted its ability to leave JP Morgan. So a
22 substitution had to occur from that.
23 We also understand that there were
24 operational inefficiencies that occurred during
25 the movement of the rest of the securities,

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1 KARP
2 A. My understanding from the JP Morgan
3 perspective was that they had released -- that
4 they had released approximately 42.3 billion.
5 There was a hard stop at DTC at 11 p.m., so no
6 more collateral could transfer, and that they
7 were requested by LBI to provide 7 billion
8 dollar cash financing to Barclays to cover the
9 difference.
10 And when I had conversations with
11 Barclays personnel, they explained that they --
12 there was a shortfall of approximately 7 billion
13 dollars in collateral that they had expected to
14 receive.
15 Q. Let me show you a document we will
16 mark as 569.
17 (Exhibit 569, document Bates stamped
18 DT 280 through 285 marked for
19 identification, as of this date.)
20 Q. Do you recognize this document?
21 A. Yes.
22 Q. Can you describe what it is, please?
23 A. This is a time line analysis, based
24 upon our discussions with JP Morgan on the
25 movement of the securities related to the repo

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1 KARP
2 transaction, and some other information
3 regarding LBI's -- what LBI owed to JP Morgan.
4 And then after the time line is a
5 summary bullet discussion of -- discussions that
6 we had with Barclays senior management and some
7 former LBI employees.
8 Q. And who prepared this analysis?
9 A. Myself, Vikram Ramani and Chris
10 Acosta.
11 Q. And looking at Bates stamp page
12 DT 281, under the 7:30 p.m. column, or row, do
13 you see in the second box where it says
14 "Conclusion, LBI sent wrong files to JPM"?
15 A. Yes.
16 Q. Is that Deloitte's conclusion?
17 A. No. That was JP Morgan's -- how they
18 relayed it to us.
19 Q. And what is -- can you just elaborate
20 what that refers to, LBI sending the wrong files
21 to JPM?
22 A. JP Morgan explained that securities
23 that they released to be transferred back to
24 Lehman, which would then move on to Barclays'
25 account at Bank of New York, were being returned

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1 KARP
2 A. They didn't, they didn't know, they
3 didn't have a listing of what Bank of New York
4 was expecting.
5 Q. Did anyone from LBI or anyone else
6 contradict the fact that LBI had sent wrong
7 files to JPM?
8 A. No.
9 Q. OK. Can you pick up the story from
10 there? Did they send the right files? Next
11 line is, "LBI sends new files," and --
12 A. That's my understanding, is that LBI
13 sent new files, and securities started to move
14 again from JP Morgan.
15 Q. The next box down says, "JPM
16 understands that Barclays is not getting the
17 securities it was expecting and Lehman's DKs
18 those securities."
19 Can you explain what DK'ing means?
20 A. DK is a term "don't know" and where
21 they reject the securities, so they go back to
22 where they started.
23 Q. And it says, "LBI continues to look
24 for collateral to meet obligation to Barclays."
25 Why were they doing that? Can you

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1 KARP
2 or rejected by Bank of New York, and when that
3 happened, the securities ended up coming back
4 into the pledge -- into a pledged account at
5 JP Morgan, LBI's pledge account at JP Morgan.
6 There was -- JP Morgan explained that
7 they had a conference call with LBI to find out
8 why this was occurring, and they said LBI came
9 back and said, "We sent you the wrong file for
10 the releases, and we are going to send a new
11 one."
12 Q. And how did the wrong, sending the
13 wrong file play into this? Is that what caused
14 Bank of New York to reject some of them?
15 A. My understanding from JP Morgan was
16 that Bank of New York was not expecting these
17 specific securities, which is why they rejected
18 them.
19 Q. Bank of New York, is it your
20 understanding that Bank of New York was
21 expecting securities that were posted as part of
22 the Fed repo?
23 A. I don't know what Bank of New York was
24 expecting.
25 Q. OK. JPM didn't explain why --

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1 KARP
2 elaborate a little bit more on that?
3 A. My understanding from JP Morgan was
4 that they, LBI had told them that they were
5 looking for additional collateral to send to
6 Barclays.
7 Q. And why did they need to do that?
8 A. JP Morgan, when we had the discussion
9 with them, said that there was -- that they
10 hadn't released enough collateral for the repo
11 transaction. So LBI was looking for more
12 collateral.
13 Q. And how much collateral was -- were
14 they supposed to release in total? Do you
15 recall?
16 A. It was approximately 49 billion of
17 collateral, was the -- was what we had been told
18 by JP Morgan.
19 Q. Is that -- in the bottom box there, it
20 says, "Total of 42.3 billion in collateral has
21 been sent to Lehman, comprised of 49.7 billion
22 of deliveries and net 7 billion of DKs."
23 Can you explain what is being said
24 there?
25 A. JP Morgan had told us that a total

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1 KARP
2 amount released from JP Morgan Chase to Lehman
3 was 49.7 billion, and there were some returns of
4 approximately 7 billion, which in their records
5 gave -- in their records showed a total release
6 market value of 42.3 billion.
7 Q. And your subsequent studies showed
8 that of the 42.3 billion collateral that did go
9 over to Barclays, approximately 9 billion of
10 that was collateral that was not part of the Fed
11 repo collateral, that was different collateral,
12 correct?
13 A. As I said before, that was based upon
14 the stock record as it exists at that time,
15 which was not fully updated. But yes, that was
16 the estimate when we did the analysis.
17 Q. So from the Barclays perspective, A,
18 they were short 7 billion in collateral, and B,
19 approximately 9 billion of the collateral they
20 got was different than what they were expecting?
21 MR. ROTHMAN: Objection to the form.
22 MR. TECCE: Join in the objection.
23 A. I don't know what Barclays was
24 expecting.
25 Q. What they got was 7 billion dollars

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1 KARP
2 what the actual realizable market value is?
3 MR. ROTHMAN: Objection to the form.
4 A. No.
5 Q. At no time did JP Morgan caution
6 Deloitte about assuming that collateral value
7 equated with actual realizable market value?
8 A. Are you talking in context of this
9 repo transaction?
10 Q. In context of -- any context.
11 A. In context with the repo transaction,
12 they did not -- they gave us reports with market
13 value and did not say don't rely on this.
14 In context with other collateral that
15 they were holding for LBI, they did raise
16 questions about value, but that was their
17 question.
18 Q. Let me go ahead and show you a
19 document we will mark as Exhibit 570.
20 (Exhibit 570, document Bates stamped
21 DT 276 through 278 with attachment marked
22 for identification, as of this date.)
23 Q. Do you recognize this e-mail as being
24 from JP Morgan's counsel to a number of people,
25 including yourself?

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1 KARP
2 less of collateral, plus of the collateral they
3 got, approximately 9 billion of it was different
4 than the Fed collateral, correct?
5 MR. HINE: Objection.
6 MR. ROTHMAN: Objection to the form.
7 MR. TECCE: Join in the objection.
8 Q. You can answer. They don't like me
9 summing up your testimony, but --
10 A. My understanding is they didn't
11 receive 7 billion worth of collateral, and our
12 estimate was that 9 billion was not part of the
13 Fed repo, but I do not know what Barclays was
14 expecting to receive as part of the collateral.
15 Q. Turning the page -- sorry, let me go
16 back.
17 The numbers that are being used here,
18 49.7 billion, 42.3 billion, do you know where
19 those numbers come from?
20 A. The numbers on this page would have
21 come from JP Morgan and their reports that they
22 shared.
23 Q. Do you know -- and did JP Morgan
24 caution Deloitte that these collateral figures
25 really weren't reliable in terms of identifying

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1 KARP
2 A. Yes.
3 MR. ROTHMAN: You are referring to the
4 top e-mail?
5 MR. THOMAS: Yes.
6 A. Yes.
7 Q. And have you had a chance to review
8 this document recently?
9 A. I read the top part of the e-mail.
10 Q. The e-mail says, "I have attached this
11 spreadsheet with collateral values as of
12 September 17, which was the last evening on
13 which the Fed provided financing. I understand
14 that these collateral values were furnished
15 principally by third-party pricing sources, and
16 we caution against using those values as
17 reliable indicators of realizable value."
18 Do you see that?
19 A. Yes.
20 Q. Now, the collateral values that are
21 being referred to are referring to securities
22 that were once a part of the Fed repo, correct?
23 A. Yes. According to what this says,
24 yes.
25 Q. So this is JP Morgan cautioning that

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the collateral value that were furnished by third-party pricing sources may not be reliable indicators of realizable value, correct?

A. Yes, for Annex A.

Q. Right. And can you describe what Annex A is?

A. Annex A is the list of securities that were going to be used for the settlement agreement to -- for the 7 billion dollar shortfall that was in dispute.

Q. Right.

And did Deloitte contest -- or did Deloitte believe that the collateral values associated with the securities in Annex A really were reliable as indicators of realizable value?

A. Deloitte didn't give an opinion on that.

Q. So just to understand what the securities are in Annex A, these are some of the securities that were part of the Fed repo that were supposed to go over to Barclays but didn't make it over there. Is that your understanding?

A. I don't know specifically what list Barclays may or may not have received of what

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KARP

they were supposed to get. My understanding was that these were securities that were going to be used to make, to make -- do the settlement.

Q. I think earlier you indicated that these securities were in fact securities that were once part of the Fed repo, pledged as part of the Fed repo, correct?

A. That's what the e-mail says, yes.

Q. And do you have any reason to believe that -- strike that.

So a good portion of what Barclays actually received in the 42.3 billion were part of securities pledged as part of the Fed repo, correct?

A. Yes.

Q. Do you have any reason to believe that the collateral value numbers for the securities attached to this exhibit as Annex A are any more or less reliable than the collateral value figures attached to the other Fed securities that Barclays actually did receive back in September?

MR. ROTHMAN: Objection to the form.

A. I didn't receive any indication from

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JP Morgan to question the value of the securities.

Q. That's because those securities weren't at issue as far as the settlement, correct?

A. I have no idea why they did or didn't.

Q. Did Deloitte -- obviously JP Morgan thinks it is relevant to the settlement as to what the actual values of the securities are that are going to be part of the settlement, correct?

MR. ROTHMAN: Objection to the form.

A. That's their attorney's interpretation.

Q. Did you ever -- did Deloitte ever have occasion to ask JP Morgan or anyone else whether the collateral values associated with the 42.3 billion marked, sent to Barclays, was any more reliable than the collateral values in Annex A to this document?

A. We didn't ask.

Q. Do you have any basis -- does Deloitte have any basis for saying that the 42 point -- the securities that make up the 42.3 billion,

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their collateral values are more reliable than the collateral values identified by JP Morgan in this document as being unreliable?

MR. ROTHMAN: Objection to the form.

A. I'm not sure I understand the question.

Q. Sure, let me try again.

JP Morgan is pointing out that the collateral values of the securities in Appendix A are not reliable, right?

A. I -- it doesn't say that they -- it says they caution against using them as reliable indicators. I don't know that they are saying they are unreliable.

Q. OK. JPM cautions against using them as reliable indicators.

A. Um-hm.

Q. Does Deloitte have any reason to believe that collateral value numbers associated with the securities that make up the 42.3 billion are any more reliable than any collateral value numbers that are associated with the securities in Appendix A of this exhibit?

15 (Pages 54 to 57)

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MR. ROTHMAN: Objection to the form.

A. We didn't receive any note of caution on the 42.3 billion.

Q. But you didn't receive any note from JP Morgan about the values one way or another on the 42.3 billion, correct?

A. Correct.

Q. But that wasn't part of the settlement consideration that was being considered, correct?

MR. ROTHMAN: Objection to the form.

A. I think the entire transaction was part of the settlement consideration in order to know what the settlement should be.

Q. Was there any occasion for Deloitte and JPM to have a discussion about the collateral values of the 42.3 billion the way they are having here in this exhibit?

A. I don't remember such a discussion.

Q. In any event, Deloitte has never looked at or assessed or reached any conclusions about the reliability or accuracy of that 42.3 billion collateral value number; is that correct?

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7 billion, they wanted 1.7 billion to go directly to BONY and 5.3 billion to go into -- I am sorry, 1.7 to go directly to BONY in an account for the benefit of Barclays, and 5.3 billion would be in an account for the benefit of Barclays that would be held at JP Morgan.

Q. And then down below that, Lehman sets aside collateral to cure the repo. What did you mean by curing the repo?

A. This was JP Morgan's explanation that Lehman said to cure the repo, that they had identified additional collateral that had come in to offset the balance of funds that they owe them.

But this was JP Morgan's explanation, to the extent that specifically means I'm not really -- they never really explained it in full detail.

Q. Was it your understanding of what JP Morgan was saying, that Lehman was looking for, trying to identify additional collateral to make up for the securities that were supposed to go over but didn't go over?

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A. That's correct.

THE WITNESS: Could we take just a five-minute break.

MR. THOMAS: Oh, sure, sure. Anytime you want to take a break.

THE VIDEOGRAPHER: Time is 10:58. We are going off the record.

(Recess)

THE VIDEOGRAPHER: The time is 11:09.

We are back on the record.

BY MR. THOMAS:

Q. Let me ask you to turn back to the analysis that you did of the JP Morgan tri-party agreement. And what exhibit number is that?

MR. ROTHMAN: 569.

Q. 569. Turning back to Exhibit 569, on the second page, which is DT 282, there is an entry in the second column, first row, that says "Lehman requests that cash collateral for 7 billion in two tripartite shells, 1.7 billion and 5.3 billion."

Can you explain what all that means?

A. My understanding from JP Morgan was that although Lehman was requesting a total of

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A. More for the loan that it received, the cash loan it received, which would be in anticipation of settling with Barclays.

Q. OK. On the couple columns over to the right, it says, "LBI ends up with a deficit of 23.2 billion," paren, "15.8 billion in unfunded Barclays tri-party and 7.4," parentheses, "8.6B collateral value, broker loan." Do you see that?

A. Yes.

Q. Can you explain the difference between the 7.4 billion and 8.6 billion dollar numbers there?

A. There was an overdraft balance in LBI's main cash account with JP Morgan, which was due to 7.4 billion related to settlements of transactions that had a -- which had collateral pledged against it of 8.6 billion.

Q. The 7.4 would be -- seemed to be the exact difference between 42.3 and 49.7. Can you explain the relationship there?

MR. HINE: Object to the form.

A. This was their analysis of what was owed to JP Morgan at the end of the day on the

16 (Pages 58 to 61)

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1 KARP
2 19th. So there was a 23.2 billion dollar
3 overdraft overall in the operating account, and
4 those numbers in the parentheses is how that
5 23.2 billion got there.
6 So it is not just the Barclays repo --
7 it is not just the loan for the 7 billion, it is
8 other activities as well.
9 Q. And for those who aren't accounting
10 experts, can you explain how the loan, this
11 7 billion worked, or what exactly the
12 7.4 billion number was there?
13 A. There were settlement activities that
14 day. Besides borrowing the 7 billion dollars
15 for the tri-party, there was other settlement of
16 transactions with counterparties where JP Morgan
17 was the clearing bank, and that resulted in a
18 net 7.4 billion dollar broker loan, as JP Morgan
19 describes it, for those types of activities.
20 Q. Does the 7.4 billion have any
21 connection with the repo transaction and the
22 securities that were supposed to go to Barclays?
23 A. My understanding from JP Morgan is
24 that it is all included in here, that that's all
25 the rest of the activity of the day. But we are

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1 KARP
2 Whether or not the collateral value
3 that had to move was 7.4 billion, we did not
4 validate that number, nor know how they got to
5 that number. That was just what they related in
6 their discussion with Barclays.
7 Q. The -- on the prior page, there is
8 that reference to the 49.7 billion. Do you
9 understand that to be the nominal marks on the
10 collateral that was supposed to go to Barclays
11 as part of the repo?
12 MR. ROTHMAN: Objection to the form.
13 A. Well, we were told by JP Morgan that
14 was the market value that they assigned to the
15 securities that they released for delivery to
16 Barclays.
17 Q. Well, they keep on -- we see numerous
18 references to "collateral value" and then you
19 use "market value." Do you recall specifically
20 that they described this as market value?
21 A. Without seeing the reports, I can't --
22 I'm not positive.
23 Q. So you have 49.7 billion there, and
24 then there is indications that Barclays received
25 securities with some kind of mark of

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1 KARP
2 still working through that reconciliation with
3 JP Morgan on the details, so I can't
4 specifically give you any breakout.
5 Q. So was Lehman like borrowing
6 7.4 billion from JP Morgan against collateral of
7 8.6 billion?
8 A. The way they explained it, they were
9 actually borrowing 23.2 billion versus
10 collateral that was in excess of that, including
11 this 8.6 billion piece.
12 Q. Down at the bottom row, second column,
13 it says, "JPM has discussions with Barclays to
14 deliver rest of the collateral or deliver the
15 collateral for 7.4 billion, 8.6 billion
16 collateral value, 9/18 bank loan."
17 Can you elaborate a little bit on what
18 you're saying there?
19 A. Our understanding from JP Morgan was
20 they had discussions with Barclays about
21 collateral that did not move as part of the repo
22 transaction, and there was questions as to
23 whether what collateral was going to move, and
24 what had happened to the overnight loan funding,
25 and that was part of that discussion.

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1 KARP
2 42.3 billion, which is exactly a 7.4 billion
3 difference.
4 So I wanted to make sure I understood,
5 if the 7.4 simply becomes -- comes from the --
6 at least in nominal mark terms, the missing
7 securities that didn't go over?
8 MR. HINE: Object to the form.
9 MR. ROTHMAN: Objection to the form.
10 MR. TECCE: Join in the objection.
11 A. My understanding was that 7.4 billion
12 on the second page is related to the activities
13 of the day, which includes the repo transaction.
14 I don't know whether or not that is solely the
15 repo -- it is supposed to be all the activities
16 for the day.
17 Q. So you think it may just be
18 coincidence?
19 A. I don't know. I don't know. As I
20 said, we are still working through that
21 reconciliation with JP Morgan.
22 Q. And the reference to the 9/18 bank
23 loan, you're still working through that
24 reconciliation even now, Deloitte is?
25 A. Yes.

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Q. Why is it taking so long?

A. There were several very large entries -- it took a long time for JP Morgan to provide data, and then it has taken a very long time to piece apart the data. They had some issues providing details on a lot of the information that they provided in summary format.

And then it was very difficult for us to compare that information back to LBI's records. So we continue to work with them.

Q. We will take a look at it in a minute, but at some point you got a list of CUSIPs of the securities that went over to Barclays, correct?

A. Yes.

Q. And did you -- you may have answered this, but did you try to value those securities, did Deloitte independently try to value those securities?

A. We had sent a sample of those securities to our -- to our Deloitte's pricing center to use just publicly available pricing services like Bloomberg to see what type of

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prices we might be able to get. We had a very low hit rate on getting prices, so we stopped.

Q. So you, to get a sense -- what was the reason to get a sense of whether the pricing -- how the pricing would compare to -- what was the reason for that effort?

MR. ROTHMAN: Let me caution the witness not to reveal any attorney/client communications.

But it -- I'll give you some leeway here, but can we have an agreement this won't be a waiver of any kind of privilege or protection?

MR. THOMAS: Yes, yes.

MR. ROTHMAN: OK. And we are talking about this line of questioning here?

MR. THOMAS: Yes. Nothing else comes to mind, but just let me do this.

Q. Let me ask it this way, just so I understand what was done. The CUSIPs for the securities -- you got a list of CUSIPs of securities that made up what was referred to as 42.3 billion, right? That was transferred to Barclays?

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A. Yes.

Q. And you took a sample of those and tried to price them independently, but it proved too difficult to price and so you gave up on that effort? Is that correct?

A. We received a file from Barclays of what was transferred to them under the repo transaction. That file showed a different market value than what JP Morgan showed on their file.

We were asked by the trustee to see if -- which -- whether or not the -- which prices were more accurate. So we did a sample and sent it out for just publicly available pricing services. We did that, we got very -- we got a low hit rate on those prices, so a number of them came back as not being available through publicly available sources, and at that point, we were told not to move further into that.

Q. And you did no other further work in attempting to value the 42.3 billion or the securities that were marked by JP Morgan as 42.3 billion and marked as something else by

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KARP

Barclays -- strike that.

You did nothing else to try to determine which valuations were more accurate in terms of market value?

A. The only other analysis that we performed was looking at the Barclays file, because we noted that the same CUSIP showed up more than once in the file sometimes and had two different prices. So we had notated that and asked Barclays the reasoning behind the two different prices.

That's the only other analysis that we did from a pricing perspective.

Q. Did they explain the reasoning behind it?

A. It was an error.

Q. Was it a significant portion of the -- I mean just a couple CUSIPs here and there or was it a significant --

A. It was more than a couple of CUSIPs. The total market value was, I believe, several hundred million on the total, 43 billion, 43.9 billion.

Q. Do you know if Barclays corrected it

18 (Pages 66 to 69)

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1 KARP
2 after?
3 A. We did not receive a new file from
4 them.
5 Q. I think you said Barclays had a
6 different market value than JPM Morgan, but I
7 think again, as we established earlier, you're
8 not sure whether that 42.3 was something that
9 JP Morgan actually considered a market value or
10 whether it was something they considered a
11 collateral value, hence they used that term in
12 some of the documents we looked at?
13 A. My understanding from discussions with
14 them, it was market value. I'm not sure of the
15 difference in term when they refer to it as
16 collateral value, that it is different than
17 market value.
18 Q. Well, you recall that warning, caution
19 not to assume that the collateral values
20 associated with some of the Fed securities was
21 really indicative of realizable value. Do you
22 recall that?
23 MR. TECCE: Objection to form.
24 MR. HINE: Objection.
25 MR. ROTHMAN: Objection to form.

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1 KARP
2 other?
3 A. I don't recall it being discussed one
4 way or the other. I don't recall them saying
5 anything that I had to worry about the value of
6 those securities when I was doing this analysis.
7 Q. Well, when you did this analysis, did
8 you have other e-mails back and forth with JPM
9 Morgan or their counsel concerning their
10 analysis, or did you just speak with them about
11 this and then do the analysis?
12 A. We met with them several times about
13 the analysis and showed it to them before we
14 discussed it with the trustee.
15 Q. Do you have any idea where JP Morgan
16 got their marks from, whether it was just on the
17 books or in the records?
18 A. We didn't ask them.
19 Q. You have no idea how they came up with
20 the 42.3 billion?
21 A. No.
22 Q. Do you have any knowledge as to
23 whether Lehman was updating their books after
24 they filed -- strike that.
25 Do you have any knowledge as to

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1 KARP
2 A. Yes, but that was for the Annex A
3 securities for the settlement that was being
4 done in December.
5 Q. That was part of the Fed repo
6 securities, and you have no reason -- I think as
7 we established, there is no reason for you to
8 believe that collateral values were any more
9 reliable as market value indicators for that set
10 of Fed repo securities than they were for the
11 other set of Fed repo securities that were
12 actually transferred to Barclays?
13 MR. TECCE: Objection to the form of
14 the question.
15 MR. ROTHMAN: Objection to form.
16 A. As a tri-party custodian, it is
17 JP Morgan's responsibility to make sure that the
18 value is appropriate for the collateral it is
19 receiving under a tri-party arrangement. So at
20 the time when I did the analysis, I would not
21 have a reason to expect that the 42.3 billion
22 value was incorrect, and they not indicate that
23 there was such an issue with the valuation of
24 those securities.
25 Q. But it wasn't discussed one way or the

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1 KARP
2 whether Lehman was updating their marks after
3 September 12, 2008?
4 A. The books and records that we have
5 seen show market values on a daily basis.
6 Q. From what date?
7 A. From their -- we have seen reports,
8 not full reports, we have seen some reports that
9 you can pull off their historical system that
10 show market values. I don't know all the dates
11 that we have looked at. But there were -- we
12 have, in the reconciliation related to LBIE, we
13 have been rolling forward from September 12, and
14 the reports that we have seen there for some of
15 those positions and the breaks we have been
16 reconciling have market values on them.
17 Q. Do you know if they are being updated
18 daily? Have you checked that?
19 A. I wouldn't know if they are being
20 updated daily. My understanding from
21 conversations with former LBI personnel is the
22 records were running that week as normal and
23 that they were able to prepare a customer
24 reserve formula computation on the 19th, which
25 would have required market values.

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1 KARP
2 Q. Who told you that?
3 A. We spoke to a number of people about
4 books and records. Do you want me to list them?
5 Q. Yes, please.
6 A. Alastair Blackwell, Neil Ullman, Alex
7 Rupo, Anthony Stucchio, Bill Burke. Jim Haska
8 was in conversation -- in the conversations, as
9 well as Ricky Pollack and Bill Gallagher.
10 Q. And when did these conversations take
11 place?
12 A. We have had many conversations with
13 them. They were assigned to work with Deloitte
14 and the trustee and his staff through a
15 transition services agreement to help maintain
16 and run the books and records of LBI for the
17 trustee.
18 So we had many conversations with them
19 from the time we started at the end of
20 September.
21 Q. Do they still work for LBI?
22 A. They work for Barclays, except Anthony
23 Stucchio is no longer with Barclays. The rest I
24 believe still work for Barclays.
25 Q. Are you aware there has been testimony

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1 KARP
2 movements and doing the reconciliation with
3 JP Morgan and DTC. So it would have been the
4 operational people that would have -- typically
5 a file would come through from JP Morgan and DTC
6 that would show the securities' movements from
7 the day before.
8 Those files would be loaded overnight,
9 and the next day a report would come out and
10 tell them if there is differences between the
11 records and what actually occurred, and then
12 they would, you know, reconcile it and determine
13 what the appropriate action is.
14 Q. And can you describe the TMS system,
15 please?
16 A. TMS ADP system is primarily an equity
17 corporate bond system, back office operational
18 system that records the transactions for cash
19 and securities movements and holds customer and
20 firm accounts.
21 Q. Is that something operated by LBI?
22 A. Yes.
23 Q. Is that something that LBI currently
24 has --
25 MR. ROTHMAN: Can we just get a time

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1 KARP
2 in this case that the accounting system was down
3 at Lehman after the bankruptcy filing, that
4 week, and marks weren't being updated?
5 MR. ROTHMAN: Objection to the form.
6 MR. TECCE: Objection to the form of
7 the question.
8 MR. HINE: Objection.
9 A. Which accounting system?
10 Q. The accounting systems, plural.
11 A. My understanding is that the back
12 office systems, where the stock records are,
13 which were used to prepare the 15c3-3
14 computation, were being updated.
15 Q. Let's talk about the securities, the
16 value of the securities that were conveyed to
17 Barclays. What system or systems would those
18 values be recorded in?
19 A. ADP or -- which is also sometimes
20 referred to as TMS and MTS.
21 Q. Who would be responsible for updating
22 those values?
23 A. Well, ADP is a third-party vendor.
24 But there would have been operational people
25 that were responsible for recording the

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1 KARP
2 frame on that.
3 Q. I mean now, today.
4 A. Still today?
5 Q. Who controls TMS, LBI or Barclays?
6 A. A combination.
7 Q. So LBI still has access to it?
8 A. Yes.
9 Q. And is it various traders who would be
10 responsible for inputting change in value of
11 securities?
12 A. I'm not sure how LBI was structured to
13 make changes on prices.
14 Q. Well, after the bankruptcy filing on
15 that Monday, for example, how -- who is it --
16 Monday, September 15, 2008, who at LBI would be
17 responsible for updating value of the securities
18 that would eventually be transferred to Barclays
19 as part of the sale transaction?
20 MR. HINE: Object to form.
21 A. My understanding is, from former LBI
22 employees, is that there were pricing feeds from
23 various pricing services that they utilized that
24 would have fed prices to these back office
25 systems.

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1 KARP
2 Q. You thought it was an automated
3 process that didn't involve employees doing
4 anything?
5 A. There were some securities, my
6 understanding, that were priced by the trading
7 desks, but I don't know to the extent that that
8 occurred or whether or not they did or did not
9 do that.
10 The majority of the prices, my
11 understanding, came through pricing feeds
12 directly into their systems.
13 Q. Do you have knowledge of whether those
14 systems were up and running the week of
15 September 15?
16 A. My understanding from the LBI
17 employees is yes, they were.
18 Q. When you say LBI employees, you
19 mean --
20 A. Former LBI employees.
21 Q. Former LBI employees who are currently
22 at Barclays?
23 A. Some are at Barclays and some have
24 left.
25 Q. And which ones have left Barclays, to

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1 KARP
2 the TMS system to see whether, in fact,
3 securities' values were being updated? The
4 marks were being updated?
5 A. Yes.
6 Q. You have done that for September --
7 A. 19th.
8 Q. -- 15th versus the 12th?
9 A. I am sorry. We have done it for the
10 19th.
11 Q. Versus what?
12 A. Not versus anything. Looked for
13 market values as of the 19th.
14 Q. I see. So you have gone in, looked on
15 the 19th, and there are market values in the
16 system on the 19th?
17 A. Yes.
18 Q. Now, you haven't gone and looked and
19 seen if those are the same market values that
20 were there on the 12th, have you?
21 MR. HINE: Object to the form.
22 A. We haven't -- I don't believe we have
23 compared the 19th to the 12th. But we have
24 reports that came out of those systems that show
25 different values, the 19th versus the 12th,

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1 KARP
2 your knowledge?
3 A. As I mentioned before, Anthony
4 Stucchio has left. Kendall McLaughlin, who I
5 didn't mention before related to that question,
6 is somebody that we had spoken to who has also
7 left.
8 And there have been some operational
9 people who have left. I don't, I don't remember
10 all their names. The main people were really,
11 that we dealt with, Neil Ullman, Alastair
12 Blackwell and Alex Rupo, were the three main
13 operational people that we dealt with.
14 Q. And are they at Barclays still?
15 A. Yes.
16 Q. Do you still deal with them?
17 A. Yes.
18 Q. Do you have any sense of the order of
19 magnitude, what percentage of securities were
20 not automated -- updated through some automated
21 system but had to be updated based upon traders'
22 information and so forth?
23 MR. ROTHMAN: Objection to the form.
24 A. No.
25 Q. Have you gone -- have you looked in

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1 KARP
2 versus the 17th, which support the different
3 customer reserve formula computations that were
4 prepared that week.
5 Q. So are you talking about different
6 aggregate values, or have you looked at
7 different marks for a particular security on the
8 19th versus earlier days?
9 A. I don't know to the extent that we
10 looked at particular marks on different days. I
11 know some analysis was done related to claims
12 that may have looked at marks on different days
13 in order to track the securities that are being
14 claimed, but I don't know for sure that somebody
15 compared the different dates to say are these
16 the same or different.
17 Q. So the reserve formula computations
18 that you referred to, are those -- are you
19 talking about aggregates? I mean are those
20 aggregate numbers where the number of assets,
21 the value is totaled up, and you see the totals
22 being different one day from the other?
23 A. There are detailed reports supporting
24 each one that we have access to that would
25 summarize the stock record totals, but also

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provide CUSIP detailed information behind that as well.

Q. What was your reason for looking at the 19th versus any other day? Or did you look at the 19th versus any other day?

MR. ROTHMAN: Again, let me caution you not to reveal any work you did on behalf of or at the request of attorneys.

A. We did the work at the request of attorneys. So, yeah.

Q. OK. Other than for the work done at the request of attorneys, did you do any analysis or assessment of whether the marks were being updated daily after September 12th through September 19th?

MR. ROTHMAN: Can we have the same agreement, this is not a waiver?

MR. THOMAS: Sure, sure. Just the agreement is, any answer will not be construed as a broader waiver.

MR. ROTHMAN: Right.

A. We have done a lot of reconciliation work on the activities that occurred the week of the 15th, such as unwinding of repo

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transactions, stock loan transactions, which have required us to look at the various records, which would include marks, because they would be as of -- they would be the market values as of those days.

I don't believe that anybody has compared day-to-day to say have those marks changed, and I don't remember anybody saying that the values have or have not changed day-to-day.

Q. Is it fair to say that you don't know whether the marks were being updated daily from September 12 to September 19?

A. Since the reserve formula calculations numbers changed, that means market values had to change. I don't know whether or not all market values changed.

Q. Do you have any other basis for believing that the marks were kept up to date other than the fact that the reserve formula numbers were changing?

A. In discussions with counterparties on stock loan and repo transactions that were outstanding at those dates, when comparing the

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information they provide, the values are similar. We did not find major differences in the values on the records of LBI at those dates versus the values that they were putting forth.

I don't know if that's --

Q. Can you give me an example?

A. For example, if Merrill Lynch had repo transactions with LBI, we received in many cases termination notices of those repo transactions. And they may have terminated the repo transaction as of the 17th or the 18th. Let's say the 17th. We would look at the records of LBI on the 17th to see what the outstanding transactions were as of that date and compare it to what Merrill Lynch was saying they had, and that would include values because they would mark to market daily to request margin.

Q. This was an extremely tumultuous time in the markets, correct?

A. Yes.

Q. Can you think of any example -- there wouldn't be any examples involving the securities that went to Barclays, correct? Because they were pledged to the Fed and then

KARP

pledged to Barclays, right?

MR. HINE: Objection to form.

MR. ROTHMAN: Objection to form.

MR. TECCE: Objection to form.

A. I guess I'm not sure -- there wouldn't be a question as to what?

Q. I mean you're -- in terms of any other valuation of those securities, you referred to some transactions that involved Merrill Lynch.

A. Um-hm.

Q. Do you remember what the assets were that were at issue in that one?

A. That was just an example of a counterparty that may have had open transactions. A repo transaction can cover -- I mean it is similar to the Barclays' repo. It could be a whole variety of securities that are within that type of repo transaction.

Q. So you have been working at -- Deloitte has been on board for over a year and a half, right?

A. Um-hm, yes.

MR. ROTHMAN: You have to answer out loud.

22 (Pages 82 to 85)

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1 KARP
2 A. Yes.
3 Q. You're aware that Barclays placed some
4 valuations on the securities -- you're aware
5 that Barclays placed valuations on the
6 securities that it received as part of the
7 transaction, correct?
8 MR. ROTHMAN: Objection to the form.
9 And let me caution you, again, not to
10 reveal information that you learned from
11 attorneys only.
12 A. I have a file from Barclays which
13 shows a market value of securities received
14 under the repo transaction.
15 Q. Do you have any basis for disputing
16 that value that they have put on it?
17 MR. ROTHMAN: Objection to the form.
18 A. We haven't done any work that would
19 indicate -- we didn't value the securities. We
20 attempted but we didn't -- we weren't able to
21 value the securities. So I would not know
22 whether or not the valuation is correct or not.
23 Q. And any efforts to actually look at
24 the TMS system to see whether the marks were
25 being updated after the bankruptcy filing until

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1 KARP
2 a daily basis. We saw some update in certain
3 other work we were doing, but we did not
4 specifically look to see if marks were being
5 updated daily.
6 Q. Is it fair to say that sitting here
7 today, that you don't know whether marks were
8 being updated daily, the LBI marks, between
9 September 12th and September 19th?
10 A. We -- I don't know for sure.
11 Q. Let me ask you to turn back to the
12 e-mail from JPM with the Appendix A attached to
13 it, Exhibit 570.
14 In the attachment, there is a -- at
15 the top, the different columns, on the
16 right-hand column it, says, "Collateral Value."
17 A. Um-hm.
18 Q. And as I understand it, you don't --
19 do you have an understanding of what collateral
20 value is vis-a-vis market value?
21 A. In this sense, it is supposed to mean
22 market value, according to our discussions with
23 JP Morgan.
24 Q. OK. If you turn back to the e-mail,
25 in the second sentence, it says, "I understand

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1 KARP
2 September 20 -- 19th was done at the direction
3 of counsel?
4 A. Whose bankruptcy filing?
5 Q. LBHI's. In any event, September 12 --
6 any work you have done, Deloitte has done, to
7 actually determine whether securities that
8 either were associated with the original asset
9 purchase agreement or the later purchase
10 agreement as revised by the clarification
11 letter --
12 MR. TECCE: Objection to form.
13 MR. HINE: Same here.
14 MR. THOMAS: I'm not done with my
15 question.
16 MR. TECCE: Sorry.
17 Q. Any work that has been done by
18 Deloitte to determine whether the marks for
19 LBI's securities were actually being updated on
20 a daily basis between September 12th and
21 September 19th has been done at the direction of
22 counsel; is that correct?
23 MR. ROTHMAN: Objection to the form.
24 A. I wouldn't say that we have done any
25 work to verify that marks were being updated on

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1 KARP
2 that these collateral values were furnished
3 principally by third-party pricing sources, and
4 we caution against using those values as
5 reliable indicators of realizable value."
6 Don't you understand realizable value
7 to be a reference to market value?
8 MR. ROTHMAN: Objection to the form.
9 A. My understanding of realizable value,
10 based upon my experience, is if I sold it today,
11 is that the value I would get. That's not
12 necessarily the last market price the securities
13 sold in the marketplace, which was my
14 understanding of these prices, was the market
15 price as of the 17th of September, based upon
16 this e-mail.
17 Q. Do you understand that a lot of the
18 securities that were conveyed to Barclays were
19 not very liquid?
20 A. I understand that people have said
21 that.
22 Q. Do you understand that it may not --
23 some of those securities may not have actually
24 sold in a long time?
25 A. I don't know that for sure.

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KARP

Q. Do you believe that to be the case?

MR. ROTHMAN: Objection to the form.

A. I don't know.

Q. The -- so you don't consider market value to be what you would actually get for the security if you tried to sell it?

A. Market value, to me, is what the last price was that it was sold as of a date. If I tried to sell it the next day or the same day, I may not get that same price. So my realizable value may be different.

Q. So for you, market value just means the value that it was sold at the last time it was sold?

A. In my experience in dealing with market value, when giving somebody a market value, it is the end-of-day price in the marketplace for that day.

Q. And if an asset last sold a year ago for \$100 and then you have the greatest financial crisis in 50 years occur and the markets are down, and everyone agrees that you are lucky to get a dollar for that item, you would still consider it to have a market value

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A. If there was no end-of-day market price for that day that I was looking to value it as of, then that is an alternative that some people use.

Q. And isn't that what you understood JPM to be referring to when it referred to realizable value, meaning what you are really going to get for it in the market?

A. I don't know if they were talking about realizable value for the day that they provided it, or on the 17th itself. Which seems to be the date that they were giving the market value for.

Q. It says, "We caution against using those collateral values as reliable indicators of realizable value."

Isn't the plain meaning of that, aren't they drawing a distinction between what may be written down as collateral value and the notion of market value in terms of what you would really get for the product?

MR. ROTHMAN: Objection to the form.

A. As I said, I don't know if they mean what my realizable value is today, October 31st,

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of 100?

MR. HINE: Objection.

MR. ROTHMAN: Objection to the form.

A. It depends upon what day you're asking me to value it as of.

Q. OK. Let's take, let's take September 1st, before Lehman's financial crisis hit. Let's say the market value was -- as of the last time it traded, it was \$100. And you are asked where is the market value of this thing on September 19th.

And if everyone assumed that you wouldn't get more than \$10 for it on the 19th, but the last time it was traded, the actual price was \$100, what would you consider the market value?

MR. ROTHMAN: Objection to the form.

MR. TECCE: Objection to the form.

A. I would -- in that instance, I would need to -- in that instance, I would normally ask for quotes from other brokers to see what price I would get.

Q. Is that ultimately what you would want to know, the price that you would get?

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KARP

when I gave you this, versus the 17th, or whether or not you would have gotten that value on the 17th that has been assigned to it.

Q. Well, it doesn't say what -- comparing it to what today's collateral value is, does it?

MR. ROTHMAN: Objection to the form.

A. But I don't know what context he is trying to make that statement.

Q. At any point in time, did JPM tell you that when they put collateral values in quotes, that they really meant market value, that they equated collateral values with market value?

A. I didn't have a discussion with them on what they meant by that.

Q. In their chart, there is a column referring to "remaining par." Do you see that?

A. Yes.

Q. Do you understand what that is referring to?

A. It's the -- my understanding, it is the par value of the security.

Q. And what is that? How is that different from collateral value?

A. The par value is not the market value.

24 (Pages 90 to 93)

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<p>1 KARP</p> <p>2 It's the underlying denomination of the</p> <p>3 security.</p> <p>4 Q. So there can be wide variations</p> <p>5 between par value and market value?</p> <p>6 A. Yes.</p> <p>7 Q. The price source -- do you see that</p> <p>8 column?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what DY refers to?</p> <p>11 A. No.</p> <p>12 Q. Do you know what VI refers to?</p> <p>13 A. No.</p> <p>14 Q. Do you have an understanding of how</p> <p>15 these securities are price sourced?</p> <p>16 A. My only understanding was they were</p> <p>17 provided by JP Morgan.</p> <p>18 Q. Do you know if JP Morgan was relying</p> <p>19 on stale Lehman marks to come up with its</p> <p>20 pricing?</p> <p>21 MR. ROTHMAN: Objection to the form.</p> <p>22 MR. HINE: Same objection.</p> <p>23 A. I don't know.</p> <p>24 Q. If you turn back to your analysis</p> <p>25 again, Exhibit 569, please. Page 2 -- DT 282.</p>	<p>1 KARP</p> <p>2 The bottom row, third column: "JP Morgan shows</p> <p>3 CUSIP making up the bank loans and the remaining</p> <p>4 securities to be delivered. Barclays rejects</p> <p>5 pool of collateral, as it was not what was</p> <p>6 anticipated."</p> <p>7 Do you recall JPM indicating to you</p> <p>8 that that's what happened, Barclays rejected the</p> <p>9 pool of collateral because it was not what was</p> <p>10 anticipated?</p> <p>11 A. This is what JP Morgan told us, this</p> <p>12 is what we documented.</p> <p>13 Q. Who at JP Morgan told you this?</p> <p>14 A. I don't know which specific person.</p> <p>15 There was a group of people in the meeting to</p> <p>16 discuss this.</p> <p>17 Q. Can you think of any of the names?</p> <p>18 A. Yes. Scott Sandler, Margaret</p> <p>19 Sullivan, Theresa Campanaro, and Mark O'Donnell.</p> <p>20 Q. Turning a couple of pages to the</p> <p>21 summary of discussions with Barclays and former</p> <p>22 LBI employees, just so I understand, the chart</p> <p>23 above, the three-page analysis with the boxes</p> <p>24 above this, are principally based on what</p> <p>25 JP Morgan told you in your discussions with</p>
Page 96	Page 97
<p>1 KARP</p> <p>2 them?</p> <p>3 A. Yes.</p> <p>4 Q. On DT 284, where it says, "The Federal</p> <p>5 Reserve reached out to Barclays on 9/16 to take</p> <p>6 the Fed out of the transaction it had with LBI,"</p> <p>7 is that your understanding, that that was</p> <p>8 something that the Fed asked Barclays to do?</p> <p>9 A. That's what Barclays told me.</p> <p>10 Q. Do you have any -- do you believe that</p> <p>11 to be the case? Do you have any reason not to</p> <p>12 believe that to be the case?</p> <p>13 A. I've participated in a meeting with</p> <p>14 the Fed where this was -- where we discussed</p> <p>15 this document, and they didn't say it wasn't</p> <p>16 true.</p> <p>17 Q. Who did you meet with at the Fed?</p> <p>18 A. Shari Leventhal and her direct boss,</p> <p>19 and I do not remember his name.</p> <p>20 Q. And did they have -- did you give them</p> <p>21 a copy of this document?</p> <p>22 A. They did see a copy. I don't know if</p> <p>23 they retained it.</p> <p>24 Q. And would it be both parts of the</p> <p>25 attachment to this e-mail, 569?</p>	<p>1 KARP</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall them disagreeing with</p> <p>4 any part of the document?</p> <p>5 A. No.</p> <p>6 Q. When did you first have any</p> <p>7 understanding of the repo transaction?</p> <p>8 A. Can you define what you mean by</p> <p>9 "understanding"?</p> <p>10 Q. Sure. When did you know that there</p> <p>11 was a repo agreement involving Barclays and</p> <p>12 Lehman?</p> <p>13 A. I believe it was -- it would have been</p> <p>14 after September 26. September 26, I believe,</p> <p>15 was the day I met with Anthony Stucchio to gain</p> <p>16 an understanding of some of the regulatory work,</p> <p>17 and I believe that's where I first heard about a</p> <p>18 Barclays repo transaction.</p> <p>19 Q. Who does Anthony Stucchio work with?</p> <p>20 A. He is now at Deutsche Bank. He was an</p> <p>21 LBI employee.</p> <p>22 MR. THOMAS: This might be a good</p> <p>23 natural breaking point if you want to take a</p> <p>24 break.</p> <p>25 THE VIDEOGRAPHER: The time is 12:01.</p>

25 (Pages 94 to 97)

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1 KARP
2 We are going off the record.
3 (Recess)
4 THE VIDEOGRAPHER: The time is 12:16.
5 We are back on the record.
6 BY MR. THOMAS:
7 Q. Let me show you a document we will
8 mark as 571.
9 (Exhibit 571, document Bates stamped
10 DT 506 with attachment marked for
11 identification, as of this date.)
12 Q. Let me first ask you if you recognize
13 that document.
14 A. Yes.
15 Q. It is an e-mail you received from JP
16 Morgan on November 3, 2008?
17 A. Yes.
18 Q. And let me note that the attachment
19 there may be truncated, meaning there is some
20 additional sheets that were produced in the
21 native format. I would just note that if it
22 becomes relevant, let me know and we will go
23 ahead and mark the entire file and put it in.
24 Can you explain to me what the
25 attachment is, please?

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1 KARP
2 A. I wouldn't know.
3 Q. If you look at the attachment, and the
4 first page of the attachment, it says, "Project
5 Tassimo." Do you see where there is one column
6 that has "CD remaining" under "Mark by JPM"?
7 A. Yes.
8 Q. And what do you understand that column
9 to be reflecting?
10 A. Well, underneath the box it says, "CV
11 equals collateral value," so I'm assuming it is
12 the collateral value."
13 Q. And that totals up to 5.4 billion?
14 A. That's what it says.
15 Q. And there is another column that JPM
16 has, the 11/3 JPM value. Do you understand that
17 to be their estimate of market value for the
18 assets?
19 A. Based upon the e-mail.
20 Q. And that's 2.8 million?
21 A. 2.8 billion.
22 Q. Billion, excuse me. 2.8 billion.
23 A. That's what it says.
24 Q. And is it your understanding that --
25 let's go back to the e-mail. It says, "You will

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1 KARP
2 A. It appears to be a listing from
3 JP Morgan of collateral value of the securities
4 that would be part of the settlement with
5 Barclays.
6 Q. And looking at the e-mail, it says,
7 "In accordance with your request, attached is a
8 spreadsheet showing, A, the collateral value,"
9 in quotes, "as of September 17th of the
10 settlement consideration, Fed portfolio
11 securities, which are the securities to be
12 delivered to Bar Cap under the proposed
13 settlement agreement, and B, JP Morgan's
14 estimate of market value as of November 3rd."
15 Does this refresh your recollection
16 that JP Morgan used different terms for when
17 they are describing collateral value versus
18 market value?
19 MR. ROTHMAN: Objection to the form.
20 A. I see it here.
21 Q. They are putting -- did you understand
22 them to be drawing a distinction between what
23 they put in quotes as collateral value and what
24 they would describe as market value?
25 MR. HINE: Object to form.

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1 KARP
2 note that there are a number of securities for
3 which JPM Morgan did not provide such an
4 estimate because there is insufficient
5 information on which it can base an estimate."
6 Were some of the securities pledged as
7 part of the Fed repo difficult to value?
8 A. I don't know.
9 Q. JPM apparently is having difficulty
10 valuing them, and didn't Deloitte have
11 difficulty in valuing them too?
12 MR. ROTHMAN: Objection to the form.
13 MR. HINE: Objection to form.
14 A. We did a sample. I don't know that
15 all are difficult to value.
16 Q. At least some are difficult to value?
17 A. I don't know to what extent JP Morgan
18 tried to value, so I don't know whether it was
19 difficult or not.
20 Q. I mean if it were easy, you could have
21 just -- Deloitte could have a year and a half
22 ago looked up the values, right?
23 MR. ROTHMAN: Objection to form.
24 MR. TECCE: Objection to form.
25 A. Deloitte just used publicly available

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<p>1 KARP</p> <p>2 sources. If there were other avenues to</p> <p>3 explore, we did not do that.</p> <p>4 I don't know what avenues JP Morgan</p> <p>5 took to try to value anything.</p> <p>6 Q. Well, you did try to explore. You</p> <p>7 took a sample and tried to value them and</p> <p>8 decided it was --</p> <p>9 A. Only publicly available pricing</p> <p>10 services.</p> <p>11 Q. So you're saying you didn't dig</p> <p>12 deeper, trying to value them using nonpublicly</p> <p>13 available sources?</p> <p>14 A. Correct.</p> <p>15 Q. Do you disagree with JPM's assessment</p> <p>16 that some are difficult to value?</p> <p>17 MR. ROTHMAN: Objection to the form.</p> <p>18 A. I don't know whether or not they are</p> <p>19 difficult to value. We only did a sample on a</p> <p>20 limited view.</p> <p>21 Q. Do you see in the second paragraph, it</p> <p>22 says, "Please note the collateral value was</p> <p>23 obtained from third-party pricing sources, and</p> <p>24 JPM Morgan cautions that collateral value may</p> <p>25 not be a reliable indicator of realizable</p>	<p>1 KARP</p> <p>2 value"? Do you see that language?</p> <p>3 A. Yes.</p> <p>4 Q. So JPM is again cautioning against</p> <p>5 using the collateral value as a reliable</p> <p>6 indicator of realizable value, correct?</p> <p>7 A. That's what it says.</p> <p>8 Q. I am going to go ahead and mark a</p> <p>9 document as Exhibit 572.</p> <p>10 (Exhibit 572, subpoena marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. Let me ask you, have you seen this</p> <p>13 document before?</p> <p>14 A. Yes.</p> <p>15 Q. And what is it?</p> <p>16 A. It's a request, it is a subpoena</p> <p>17 request for a deposition.</p> <p>18 Q. And on page 9, you see a list of</p> <p>19 examination topics?</p> <p>20 Do you see that list?</p> <p>21 A. Yes.</p> <p>22 Q. And you understand you are the witness</p> <p>23 on these topics for Deloitte?</p> <p>24 A. Yes.</p> <p>25 Q. And can you describe briefly what you</p>
Page 104	Page 105
<p>1 KARP</p> <p>2 did to prepare for your deposition today?</p> <p>3 A. I met several times with Hughes</p> <p>4 Hubbard.</p> <p>5 Q. Anything other than that?</p> <p>6 A. I read through some documents that</p> <p>7 they had showed me.</p> <p>8 Q. Did you speak with anyone else other</p> <p>9 than Hughes Hubbard?</p> <p>10 A. I spoke to some of my partners that</p> <p>11 would have made -- that may have had answers to</p> <p>12 some of these comments -- some of these topics.</p> <p>13 Q. And who were those people that you</p> <p>14 spoke to?</p> <p>15 A. Felicia Sokalski, John Manley and</p> <p>16 Chris Harris.</p> <p>17 Q. And did they provide you with any</p> <p>18 useful information on these topics?</p> <p>19 A. They, John and Felicia were the people</p> <p>20 that were in -- on the ground in the beginning,</p> <p>21 so for topic 11, they had the most information.</p> <p>22 Q. And what is your understanding,</p> <p>23 Deloitte's understanding of when a SIPC</p> <p>24 liquidation of LBI was first considered,</p> <p>25 anticipated or planned?</p>	<p>1 KARP</p> <p>2 A. On September 15th or 16th, John</p> <p>3 received a call from -- John Manley received a</p> <p>4 call from SIPC saying that there was a</p> <p>5 possibility that Lehman Brothers, Inc. was going</p> <p>6 into liquidation. And they wanted to know</p> <p>7 whether or not Deloitte would be able to clear</p> <p>8 conflicts and had the people available to assist</p> <p>9 if necessary.</p> <p>10 Q. Looking at topic 2, and -- which is</p> <p>11 your analysis, reconciliation, evaluation of</p> <p>12 each of the acquired financial assets, and those</p> <p>13 assets are defined in the document to include a</p> <p>14 number of items. I just want to ask you about</p> <p>15 some of them.</p> <p>16 The -- I think we have discussed</p> <p>17 the -- any efforts to value the repo collateral,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Is there -- was there any efforts to</p> <p>21 value the repo collateral that we haven't</p> <p>22 already discussed?</p> <p>23 A. No.</p> <p>24 Q. In terms of the clearance box assets,</p> <p>25 has -- do you know what I am referring to when I</p>

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1 KARP
2 say clearance box assets?
3 A. My understanding is that that's the
4 boxes at -- the box at DTC.
5 Q. And is it your understanding those
6 assets were being conveyed to Barclays?
7 MR. ROTHMAN: Objection to the form,
8 and I caution you not to reveal any
9 information that you have learned solely
10 from counsel.
11 A. My understanding from some of the
12 Barclays personnel is that these -- that they
13 believe these assets should be transferred to
14 them.
15 Q. And have you attempted, has Deloitte
16 done any valuations of those assets?
17 MR. ROTHMAN: You can answer that one
18 yes or no, but --
19 A. Deloitte has not done -- no.
20 Q. Has Deloitte assisted in the
21 evaluation of those assets?
22 MR. ROTHMAN: Objection to the form.
23 A. No.
24 Q. I'm hearing long pauses, so I just --
25 let me ask you, what is it that you are thinking

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1 KARP
2 A. Deloitte has not done valuation.
3 Q. The valuation that's on the draft
4 balance sheet, do you know how it was obtained?
5 A. They would have been through
6 third-party pricing sources and Barclays.
7 Q. The third-party pricing sources, did
8 Deloitte go out and make use of third-party
9 pricing sources?
10 A. No. Those sources would have come
11 through Barclays and existing Lehman Brothers
12 relationships that continued past bankruptcy.
13 Q. Can you be a little bit more specific
14 on the last part?
15 A. We still have a relationship with
16 Bloomberg to obtain some pricing information.
17 Q. "We" being LBI, the trustee?
18 A. LBI, the estate.
19 Q. Do you know the amounts that are on
20 the draft balance sheet for clearance box
21 assets?
22 MR. ROTHMAN: Objection to the form.
23 A. There is no specific amount for
24 clearance box assets. It's listed as firm
25 inventory.

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1 KARP
2 about, you are distinguishing?
3 A. Well, those assets would have been
4 part of the balance sheet.
5 Q. OK.
6 A. So they would have been valued for the
7 balance sheet of 9/19. It would have included
8 that pool.
9 Q. Is the balance sheet -- when do you
10 expect to complete the balance sheet for 9/19?
11 A. I'm not sure.
12 Q. Is it complete with respect to items
13 such as the clearance box assets?
14 A. It's being reviewed at this time by
15 the trustee and his counsel --
16 MR. ROTHMAN: No, don't talk about
17 things that the lawyers are doing, please.
18 Q. It is OK to just indicate that it is
19 not in your bailiwick. It is being reviewed I
20 think is OK to say. Otherwise, it is hard to
21 figure out the story of why.
22 OK, just let me talk about any
23 valuations you have placed on the clearance box
24 assets. Has Deloitte placed, assigned a value
25 to the clearance box assets?

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1 KARP
2 Q. And do you know what that adds up to?
3 A. There are still open questions on
4 those numbers, as we are still waiting for
5 information from JP Morgan and DTC. So those
6 numbers are not finalized.
7 Q. What information are you waiting for
8 from JP Morgan and DTC?
9 A. JP Morgan, there are some open
10 questions on the unwinding of some transactions
11 that happened that week, the 18th and 19th.
12 Some journal -- some entries that hit the bank
13 accounts that affect security settlements that
14 we are waiting for details on.
15 And for DTC, we are still waiting for
16 the -- some information on some of the
17 securities' movements and settlements that they
18 did through their various clearing
19 organizations.
20 Q. Accepting that there is maybe some
21 margin of error here because of those unknown
22 elements, do you know the rough range of order
23 of magnitude of the clearance box assets?
24 MR. ROTHMAN: Objection to the form.
25 Calls for speculation.

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<p>1 KARP</p> <p>2 A. I don't remember. And I'm not sure</p> <p>3 what -- whether clearance box means firm</p> <p>4 inventory.</p> <p>5 Q. Same questions for the 15c3-3 assets.</p> <p>6 Has Deloitte tried to determine the value of</p> <p>7 assets in that category?</p> <p>8 A. That category includes cash and</p> <p>9 securities, and we did not value them, the</p> <p>10 securities.</p> <p>11 Q. Is Deloitte aware of any effort to</p> <p>12 value those securities?</p> <p>13 A. The securities would have been priced</p> <p>14 by Barclays as part of the balance sheet</p> <p>15 efforts.</p> <p>16 Q. For your purposes, are you just using</p> <p>17 those prices provided by Barclays?</p> <p>18 A. We also received information from</p> <p>19 JP Morgan with a market value of those</p> <p>20 securities, because they were holding the</p> <p>21 securities.</p> <p>22 Q. And which value are you using, or some</p> <p>23 third value?</p> <p>24 A. I'm not sure which value was used. I</p> <p>25 don't know that there was a difference between</p>	<p>1 KARP</p> <p>2 the two.</p> <p>3 Q. In terms of the opening balance sheet,</p> <p>4 do you have a number yet for -- strike that.</p> <p>5 Do you -- have you made any efforts to</p> <p>6 value the exchange-traded derivatives that were</p> <p>7 a part of the sale transaction?</p> <p>8 MR. ROTHMAN: Objection to the form.</p> <p>9 A. The exchange-traded derivatives for</p> <p>10 the futures business were -- customers would not</p> <p>11 be on a balance sheet.</p> <p>12 Q. Right. I divorced it from the balance</p> <p>13 sheet.</p> <p>14 A. Sorry.</p> <p>15 Q. So not -- have you made any efforts to</p> <p>16 value those assets?</p> <p>17 A. No.</p> <p>18 Q. Do you know what the values of those</p> <p>19 assets are?</p> <p>20 A. I do not.</p> <p>21 Q. Do you know what the value of the</p> <p>22 margin associated with the exchange-traded</p> <p>23 derivatives is?</p> <p>24 A. No. We are still missing that</p> <p>25 information on some of that.</p>
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<p>1 KARP</p> <p>2 Q. What information are you missing?</p> <p>3 A. We do not have all the statements from</p> <p>4 all the exchanges around the world that indicate</p> <p>5 what the margin was up at those exchanges.</p> <p>6 Q. Has -- in connection with the --</p> <p>7 either the Lehman's/Barclays sales transaction</p> <p>8 or your efforts to generate an opening</p> <p>9 balance -- a balance sheet for LBI, what parties</p> <p>10 other than Houlihan and -- excuse me, Hughes and</p> <p>11 the trustee have you spoken with?</p> <p>12 A. I'm sorry.</p> <p>13 Q. So you mentioned you spoke at one</p> <p>14 point with the Fed, SIPC. Have you had</p> <p>15 conversations with any other third parties --</p> <p>16 let's limit it to issues involving the</p> <p>17 Barclays/Lehman sales transaction?</p> <p>18 A. I have participated in meetings with</p> <p>19 the creditors committee.</p> <p>20 MR. ROTHMAN: Just don't say what was</p> <p>21 said yet.</p> <p>22 THE WITNESS: OK.</p> <p>23 MR. ROTHMAN: Go ahead and answer the</p> <p>24 question. Give him a list of people.</p> <p>25 A. Creditors committee, LBHI, the ad hoc</p>	<p>1 KARP</p> <p>2 creditors committee, the SEC, and FINRA.</p> <p>3 Q. Any other parties or organizations</p> <p>4 that you can think of?</p> <p>5 A. Not that I can remember.</p> <p>6 Q. When did you first meet with the</p> <p>7 creditors committee?</p> <p>8 A. I don't remember. We have met with</p> <p>9 them periodically throughout this entire</p> <p>10 process.</p> <p>11 Q. Were you aware of an October 8, 2008</p> <p>12 presentation by Alvarez & Marsal/LBHI to the</p> <p>13 creditors committee and others concerning the</p> <p>14 deal?</p> <p>15 MR. TECCE: Objection, form.</p> <p>16 A. I don't remember.</p> <p>17 Q. Are you aware that there was a -- when</p> <p>18 some of the repo collateral was transferred to</p> <p>19 Barclays, that week of September 15, are you</p> <p>20 aware there was a discussion about updating the</p> <p>21 valuation for that collateral?</p> <p>22 MR. ROTHMAN: Objection to the form.</p> <p>23 And I'll caution the witness not to reveal</p> <p>24 information learned solely from the lawyers.</p> <p>25 MR. TECCE: Objection to form.</p>

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1 KARP
2 MR. THOMAS: Well, if it is a fact, I
3 don't think the fact that it may have come
4 from a lawyer makes it privileged. It's
5 just a fact. I mean if I ask her if it was
6 raining yesterday, and she says, it is
7 because the lawyer told her it was raining,
8 she can still say it is raining.
9 MR. ROTHMAN: If she can answer
10 independently, that's fine. But I'm not
11 going to let her get into discussions she
12 has had with Hughes Hubbard lawyers or with
13 the trustee concerning issues that are at
14 issue in this litigation and dispute.
15 Q. I'm not asking for the substance of
16 the communications with lawyers. I am just
17 asking you about facts you know as you sit here
18 today. Did you know --
19 A. Could you repeat it.
20 Q. Sure.
21 Did you know roughly September 18th,
22 19th time frame that there was a discussion
23 involving people from Barclays and people from
24 Lehman about how much the repo collateral was
25 really worth?

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1 KARP
2 type of legal claim against Barclays? And just
3 the date.
4 MR. ROTHMAN: Objection to the form.
5 I don't know that she is -- she is not a
6 lawyer. I don't know if she is going to be
7 able to answer that question.
8 A. I don't, I don't know.
9 Q. Have you ever seen a -- strike that.
10 Have you ever done any -- has Deloitte
11 done any analysis of derivatives owned by LBI
12 the week of September 15th?
13 A. Can you define what you mean by
14 derivatives?
15 Q. Is that a term you're familiar with?
16 A. Yes.
17 Q. How do you understand derivatives?
18 What do you understand derivatives to refer to?
19 A. There are a lot of things that are
20 considered derivatives, from my experience,
21 options, futures, swaps, FX. Lots of things
22 that are considered derivatives.
23 Q. Let's talk about options and futures.
24 Have you done any analysis of the derivatives
25 that were contained in the Barclays sale

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1 KARP
2 A. No.
3 Q. Are you aware that Barclays raised
4 questions that week about the values attributed
5 to some of the LBI securities?
6 MR. ROTHMAN: Same caution.
7 A. I believe JP Morgan, our discussions
8 which I -- I could check, but I believe we
9 documented in the JP Morgan that there was a
10 question about collateral value or the pool of
11 collateral, but I was not part of any
12 discussions.
13 Q. Are you familiar with a 47.4 billion
14 dollar figure being referenced as part of the
15 bankruptcy court hearings?
16 MR. ROTHMAN: Same objection.
17 A. I believe that's the number in Shari
18 Leventhal's affidavit. I think that's the only
19 time I know that number.
20 Q. You have no knowledge of it beyond
21 just reading it somewhere, you believe?
22 A. It is the only time I remember hearing
23 it. Or reading it.
24 Q. When was the first time that Deloitte
25 started doing any work in anticipation of any

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1 KARP
2 transaction?
3 MR. ROTHMAN: Objection to the form.
4 Q. Strike that, let me rephrase.
5 Have you done any analysis to
6 determine which derivative assets -- strike
7 that.
8 Do you know the value of Lehman's
9 exchange-traded derivatives as of September 16?
10 A. No.
11 Q. For any other day that week?
12 A. No.
13 Q. Did Deloitte make any effort to try to
14 figure out the value of those exchange-traded
15 derivatives during that week?
16 A. No.
17 Q. Have they done that as part of the
18 balance sheet work?
19 A. Only the portion that would be
20 included on the balance sheet.
21 Q. And what portion is that?
22 A. The firm proprietary.
23 Q. And how much is that that's included
24 on the balance sheet as of now?
25 A. I don't remember.

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1 KARP
2 Q. Order of magnitude?
3 MR. ROTHMAN: Objection to the form.
4 A. I don't remember -- the -- for the
5 options, I -- my best recollection is around 500
6 to 700 million in market value, but I'm not
7 positive.
8 For the futures, we are still waiting
9 for information from LBIE on the futures side,
10 because the futures markets closed out the
11 positions, and that data has not come back to
12 us.
13 We are also still working through data
14 from the CME for the domestic side, so that
15 information is still in flux.
16 Q. And I am looking at examination topic
17 7A now. The reference to the 4.5 billion dollar
18 figure referenced in relation to derivatives in
19 Exhibit 19, does Deloitte have any knowledge
20 about where that figure came from or how it was
21 derived?
22 A. No.
23 Q. Has Deloitte ever attempted to figure
24 out where that number came from or how it was
25 derived?

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1 KARP
2 would be letters of credit.
3 Q. Do you have any valuation other than
4 that provided by the OCC?
5 A. I'm not sure what you mean.
6 Q. So you refer to the statements from
7 the OCC on the 19th. Other than the statements
8 from the OCC, do you have any basis for
9 understanding the value of those items at any
10 point for these days referenced in the exhibit?
11 MR. ROTHMAN: Objection to the form.
12 A. Well, the cash -- we looked at LBI's
13 books and records and compared the cash balance
14 on that statement versus the cash in the books
15 as attributed to OCC, and we compared the
16 CUSIPs.
17 I don't know that we got -- we would
18 have gotten pricing from Barclays for the
19 balance sheet purposes. I don't know that there
20 was a difference between the two.
21 Q. Subpart E, the value of margin at any
22 other domestic or foreign exchange or clearing
23 corporation on those dates, any knowledge of
24 that?
25 A. We have requested and received some

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1 KARP
2 A. No.
3 Q. And subpart C of 7, it says, "the
4 portion of the value referenced in B that was
5 attributable to exchange-traded derivatives held
6 on behalf of LBI customers." Any knowledge
7 about that?
8 MR. ROTHMAN: Objection to the form.
9 A. No.
10 Q. Subpart D, the value of the margin at
11 the OCC on any of those dates listed there, does
12 Deloitte have any knowledge of that?
13 A. We have statements from the OCC as of
14 the 19th that shows total margin at the OCC of
15 approximately 2.2 billion.
16 Q. Anything else?
17 A. No.
18 Q. The total margin, is there breakdown
19 types of margin there? It is all -- is that
20 cash?
21 A. There is cash, there is Treasury
22 securities, and letters of credit.
23 Q. Can you give me the rough breakdown?
24 A. I think it is 1.2 billion of cash,
25 900 million of Treasury securities, and the rest

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1 KARP
2 statements from the various exchanges and
3 clearing corps on margin. We were also provided
4 a list by Barclays of what they thought the
5 margin was that they expected -- that they asked
6 to be turned over to them.
7 Q. And can you characterize the values in
8 any way from the information you received?
9 A. I believe the information from
10 Barclays was a little over a billion dollars of
11 margin, but in subsequent conversations with
12 them, they have said that they believe that
13 number will be less, because they know the
14 exchanges closed out positions and utilized that
15 margin for the closeouts.
16 But I don't know what the exact total
17 will be at the end.
18 Q. And the statements that you received
19 from various exchanges, what information does
20 that provide in terms of the value?
21 A. Each one would have its own listed. I
22 don't know the individual numbers and amounts.
23 Q. Subpart F, the amount of margin at the
24 OCC or any other foreign or domestic exchange or
25 clearing corporation that constituted customer

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<p>1 KARP</p> <p>2 collateral on those dates, any knowledge of</p> <p>3 those amounts?</p> <p>4 A. The OCC breaks out a customer</p> <p>5 designation, which I believe -- I don't remember</p> <p>6 what the margin requirement was. I believe</p> <p>7 500 million was what was deposited for that</p> <p>8 customer account designation per the OCC.</p> <p>9 Q. Subpart G, the margin requirements</p> <p>10 imposed on LBI by the OCC and any other domestic</p> <p>11 or foreign exchange as of those dates, any</p> <p>12 knowledge of that?</p> <p>13 A. All I know is the margin requirement</p> <p>14 for -- I don't remember what the exact margin</p> <p>15 requirement was for OCC. It was just less than</p> <p>16 the margin actually deposited as of the 19th,</p> <p>17 according to this statement.</p> <p>18 There was an excess, and I don't</p> <p>19 remember the exact number of what the excess</p> <p>20 was.</p> <p>21 Q. Do you remember roughly what the</p> <p>22 excess was?</p> <p>23 A. I know it was in the hundreds of</p> <p>24 millions. I don't -- I don't remember the -- I</p> <p>25 don't remember where the number landed.</p>	<p>1 KARP</p> <p>2 MR. THOMAS: This is probably a good</p> <p>3 time to take our lunch break.</p> <p>4 MR. ROTHMAN: OK.</p> <p>5 THE VIDEOGRAPHER: The time is 12:53.</p> <p>6 We are going off the record.</p> <p>7 (Luncheon recess)</p> <p>8 (Continued on next page)</p>
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<p>1 KARP</p> <p>2 THE VIDEOGRAPHER: The time is 1:48,</p> <p>3 we are back on the record.</p> <p>4 BY MR. THOMAS:</p> <p>5 Q. You mentioned earlier some other repo</p> <p>6 agreements that you have come across in your</p> <p>7 work with respect to LBI. Can you think of any</p> <p>8 of the names of any of the counterparties to</p> <p>9 those agreements?</p> <p>10 A. Well, there are some with Barclays,</p> <p>11 Bank Paribas, Societe Generale, a bunch of</p> <p>12 foreign banks, I don't remember all the</p> <p>13 different names of all the different</p> <p>14 counterparties, but there were, I don't know,</p> <p>15 anywhere between 40 to 50 counterparties that</p> <p>16 Barclays -- Lehman Brothers dealt with with repo</p> <p>17 contracts.</p> <p>18 Q. These were all within that period of</p> <p>19 time, September 15, that week?</p> <p>20 A. They all had them as of the 19th, this</p> <p>21 was outstanding contracts. That's the date that</p> <p>22 we are using.</p> <p>23 Q. Do you know, can you describe roughly</p> <p>24 the amounts of those repo agreements?</p> <p>25 A. They were in the billions on each</p>	<p>1 KARP</p> <p>2 side, repo and reverse repo.</p> <p>3 Q. Do you know the type of collateral</p> <p>4 that was involved in those?</p> <p>5 A. There was all types of collateral and</p> <p>6 there was no consistency.</p> <p>7 Q. Do you know, do you remember if it was</p> <p>8 like level 1, 2 and 3 types of collateral?</p> <p>9 A. No.</p> <p>10 Q. Were these ordinary commercial repo</p> <p>11 agreements?</p> <p>12 A. My understanding is that they were</p> <p>13 traditional repo under master repo agreements.</p> <p>14 Q. When did Deloitte first learn that</p> <p>15 cash margin at the OCC was transferred to</p> <p>16 Barclays?</p> <p>17 MR. ROTHMAN: Objection to the form.</p> <p>18 A. October, early October.</p> <p>19 Q. Did Deloitte have any role in</p> <p>20 approving that transfer?</p> <p>21 A. No.</p> <p>22 Q. Do you know if the trustee did?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you understand the trustee did</p> <p>25 approve that release?</p>

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1 KARP
2 MR. ROTHMAN: Objection to the form.
3 A. I don't know who approved it.
4 Q. Do you understand whether it required
5 approval?
6 A. No.
7 Q. So you just don't know any of the
8 facts -- you knew it was transferred but you
9 don't know any of the facts surrounding who
10 approved it and so forth?
11 A. Who -- no.
12 Q. When did Deloitte first learn that
13 proceeds of certain government securities held
14 by JPM as margin in its OCC accounts were
15 released to Barclays?
16 A. They were not released to Barclays.
17 Q. And why do you say that?
18 A. Because they are still held in an
19 account at JP Morgan.
20 Q. So you're not aware of any proceeds of
21 any government securities held at one point by
22 JPM as margin for the OCC accounts being
23 released to Barclays?
24 A. Could you explain what you mean by
25 "proceeds"?

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1 KARP
2 involvement in the release of those funds, those
3 proceedings?
4 A. No.
5 Q. Is Deloitte aware that LBI had
6 collateral and accounts with other domestic and
7 foreign exchange brokers of clearing houses to
8 support its business as a futures commission
9 merchant?
10 MR. ROTHMAN: Objection to the form.
11 A. Yes.
12 Q. Are you aware of any discussions with
13 Barclays prior to the closing concerning how the
14 transfer of this business was to be implemented?
15 A. No.
16 Q. Even today, you're not aware of any
17 such discussions?
18 A. No.
19 Q. Is Deloitte aware that collateral held
20 in these accounts had been transferred to
21 Barclays, either by transferring the accounts or
22 by transferring the collateral?
23 MR. ROTHMAN: Objection to the form,
24 and again, let me caution you not to reveal
25 things that you have learned solely from the

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1 KARP
2 Q. Well, money.
3 A. There was -- if I remember correctly,
4 there was a -- one of the securities matured and
5 I believe that cash may have been transferred to
6 Barclays. I believe -- I believe that that's
7 what happened.
8 Q. Do you understand roughly when that
9 happened?
10 A. I think it happened around the same
11 time that the cash moved, but I don't -- I'm not
12 sure when it actually happened.
13 Q. Would you have been aware roughly at
14 the time it happened?
15 A. I don't believe so. I wasn't really
16 involved in cash at that point, you know, in the
17 early days of the -- of our role.
18 Q. Do you know when Deloitte was aware of
19 that release?
20 A. We would have known -- we would have
21 known a couple days later for the people that
22 were reconciling cash because it would have
23 shown up as a cash movement. But otherwise, I
24 don't know the exact date.
25 Q. Do you know if Deloitte had any

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1 KARP
2 lawyers.
3 A. From some of the statements we have
4 received from the exchanges, we understand from
5 those documents that some collateral has moved
6 to Barclays.
7 Q. When did you understand that?
8 A. I'm not sure when we first started
9 getting statements. It took a long time to get
10 information from the CME. I believe it was
11 sometime in '09, not before then.
12 Q. Can you estimate a month?
13 A. I really -- I really don't remember.
14 Q. It would have been statements from the
15 CME -- what statements would have alerted you to
16 that?
17 A. We asked for statements from the CME
18 showing the positions and any margin so that on
19 those statements, we would have seen if any
20 funds had been transferred out.
21 Q. If there comes a point that I am
22 asking you a fact that you think only came from
23 your lawyer and you're not sure, if you would
24 let us know so we can discuss whether that's --
25 so you can discuss that first with your

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1 KARP
2 attorney.
3 A. OK.
4 Q. But if I ask if you know something,
5 and you say you don't know, I'm going to assume
6 that you don't know, not that you know it but it
7 just came from your lawyer, if that makes sense.
8 A. OK.
9 Q. Was there any other source of
10 information about that other than the CME
11 statements?
12 A. We have been working with some people
13 from Barclays who were former LBI employees who
14 were responsible for reconciling and
15 understanding that business. And we had heard
16 from them that certain collateral had made its
17 way to Barclays.
18 Q. Roughly when did you hear that?
19 A. I'm not sure when we heard it.
20 Q. '08, '09?
21 A. It probably was in '08 that we heard
22 it, but we wouldn't have seen documentation
23 until '09 when we received the statements.
24 Q. When you heard it, did that cause you
25 to react in any way or follow up with any

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1 KARP
2 know the circumstances in which the collateral
3 was released?
4 A. No.
5 Q. When was the first time, to your
6 knowledge, that the trustee took the position
7 that Barclays was not entitled to some or all of
8 the margin or collateral held in any of the
9 LBI's exchange-traded derivative accounts?
10 MR. ROTHMAN: I am going to direct her
11 not to answer that one.
12 MR. THOMAS: I'm just looking for a
13 date. If it is privileged, if -- it is
14 privileged, it would be on a privilege log.
15 MR. ROTHMAN: I don't think it is
16 proper for you to inquire into the work they
17 were doing.
18 MR. THOMAS: You can ask --
19 MR. ROTHMAN: There is a work product
20 protection as well as a privilege.
21 MR. THOMAS: I understand. Even for
22 example document, you would put on the log
23 the date of the document and general subject
24 matter. It is just asking when did you go
25 see a lawyer. You can ask a client when

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1 KARP
2 questions?
3 MR. ROTHMAN: Objection to the form.
4 Excluding discussions that might be
5 had with counsel.
6 Q. Well, if you discussed with counsel,
7 you can say discussed with counsel.
8 A. That's what I was about to say, any
9 discussions would have been had with counsel.
10 Q. And did you -- on this general subject
11 matter, without going into the content of the
12 discussion with counsel, did you have
13 discussions with counsel in '08 on this general
14 subject matter?
15 A. Yes.
16 Q. Did Deloitte have any role other than
17 discussions with counsel in the release of that
18 collateral?
19 A. No.
20 Q. Do you know when the trustee approved
21 the release of that collateral?
22 MR. ROTHMAN: Objection to the form,
23 mischaracterizes her testimony.
24 A. No.
25 Q. Do you know if the trustee -- do you

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1 KARP
2 they went and visited a lawyer, not the
3 subject matter. But the date isn't
4 privileged. I'm not going to get into the
5 communications.
6 MR. ROTHMAN: I don't think there is a
7 way for her to get into this area without
8 revealing privileged communications and work
9 product.
10 MR. THOMAS: What if I just agree to
11 stop at a date?
12 MR. ROTHMAN: It is -- it is not the
13 date I'm -- I am going to instruct her not
14 to answer. It's not the date I'm worried
15 about. You are asking her to confirm what
16 the trustee might or might not have said to
17 her.
18 Q. Are you aware of any communications
19 involving the trustee's position with respect to
20 whether Barclays was entitled to some or all of
21 the margin or collateral held at LBI's
22 exchange-traded derivative accounts with any
23 parties other than Hughes Hubbard or the
24 trustee?
25 MR. ROTHMAN: Objection to the form.

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1 KARP
2 Q. This would include discussions, for
3 example, with somebody at Barclays or some other
4 party about whether Barclays was entitled to
5 that collateral or margin?
6 MR. ROTHMAN: These are communications
7 that Deloitte had?
8 Q. Well, it's whether -- it is aware of
9 any such communications. Those are with, you
10 know, it is with Barclays or another party, it
11 is not privileged, I think you can answer. She
12 is looking to you.
13 MR. ROTHMAN: Are you asking her
14 whether Deloitte had communications with
15 other parties?
16 MR. THOMAS: Let's start more broadly,
17 I don't want to technically -- if she sat in
18 the conference room with the trustee and
19 talked about Barclays, I don't want to know
20 about that.
21 Are you aware of any communication,
22 outside of internal communications with
23 Hughes Hubbard and the trustee and Deloitte,
24 communications involving any other party
25 such as Barclays or any other third party

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1 KARP
2 A. Yes.
3 Q. Can you please identify those
4 communications?
5 A. There were verbal and written
6 communications from Barclays, as well as verbal
7 communications with the SEC.
8 Q. Any other parties that you can think
9 of?
10 A. Not that I can remember.
11 Q. When were the first verbal and written
12 communications with Barclays?
13 A. I'm not sure of the exact date. The
14 OCC question came up first. And that was
15 probably in '08. I'm not sure about the rest of
16 the exchanges, exchange-traded derivatives as to
17 when that exactly started with the
18 communications.
19 Q. How about the communications with the
20 SEC?
21 A. I'm not really sure. We have met with
22 the SEC every two to three weeks in the
23 beginning and then monthly, so I'm not really
24 sure when the first conversation was had about
25 this particular subject.

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1 KARP
2 about whether Barclays was entitled to some
3 or all of the margin and collateral?
4 MR. ROTHMAN: If it is Barclays,
5 that's OK, but we have a common interest
6 privilege with the other parties sitting at
7 this table.
8 Q. Let's do yes or no first.
9 A. I'm not sure I know how to answer
10 this. I think I need to talk to you.
11 MR. ROTHMAN: All right, we will take
12 a little -- unless you want to try a
13 different question.
14 MR. THOMAS: No, if there are
15 communications, I just want to identify who
16 they are with, the date, general subject
17 matter, and then if there is a privilege
18 issue, we can take that up later. I just
19 want to frame it before we take it up.
20 THE VIDEOGRAPHER: The time is 2:03,
21 we are going off the record.
22 (Recess)
23 THE VIDEOGRAPHER: The time is 2:06 we
24 are back on the record.
25 (Record read)

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1 KARP
2 Q. Why were you having conversations with
3 the SEC about this particular subject?
4 A. The SEC was interested in the progress
5 of the liquidation and the -- any open issues
6 that might exist between LBI, the trustee and
7 any parties.
8 Q. Was this identified as an open issue?
9 A. It was identified as an open subject
10 for which Barclays was demanding certain assets
11 and the trustee was still discussing them with
12 Barclays at that time.
13 Q. Was there any resolution to those
14 discussions?
15 MR. ROTHMAN: Objection to the form.
16 Q. Resolution --
17 MR. ROTHMAN: Resolution between
18 trustee and Barclays?
19 Q. Strike that.
20 How did the SEC respond?
21 A. The SEC didn't take a position. They
22 were interested in knowing the facts.
23 Q. Did you communicate those facts to
24 them in writing at any point?
25 A. I don't believe I ever did. I don't

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KARP

know if anybody else did.

Q. Who were you dealing with at the SEC?

A. We generally meet with Mike Macchiaroli and sometimes he brings one of his staff with him. Randall Roy has been there and Ray Doherty.

Q. Do you think the first discussions with the SEC may have started in about '08?

MR. ROTHMAN: Objection to the form.

A. We definitely started meeting with the SEC in '08 on other matters. I don't know when we started discussing this particular subject.

Q. Now, is it your understanding that Barclays acquired LBI's PIM, private investment management business?

A. Yes.

Q. In connection with that, Barclays acquired LBI's PIM customer accounts including assets held on their behalf and liabilities to those customers?

A. My understanding is they acquired the PIM customer accounts.

Q. By virtue of their acquiring the PIM customer accounts, did they also acquire assets

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KARP

held on the customers' behalf and liabilities to those customers?

A. I'm not sure what you mean by that.

Q. Well, to the extent there were assets and liabilities associated with the account, did they go over to Barclays?

A. My understanding was whatever was contained in each customer's account went over to Barclays, with some exceptions.

Q. What are the exceptions you are referring to?

A. Barclays did not take the FX business and certain PIM customers had open FX contracts which therefore stayed behind. I believe that was the -- it is the extent of the exceptions that I can remember.

Q. And what's the FX business?

A. Foreign exchange transactions.

Q. Did Barclays also not take over affiliate and nonaffiliate options customers' accounts?

MR. ROTHMAN:

MR. ROTHMAN: To the form.

A. My understanding was that Barclays

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KARP

was -- took over responsibility for the entire OCC relationship irrespective of who owned the options.

Q. What was the basis of that understanding?

A. My discussions with Barclays personnel who were responsible for that options business.

Q. Who was that?

A. Dan Dziemian, as well as discussions with Ken Raisler and Alan Kaplan.

Q. Did you ever review the purchase agreement?

MR. ROTHMAN: Objection to form, asked and answered.

Q. For this purchase?

A. The asset purchase agreement?

Q. Well, as revised, the purchase agreement?

MR. ROTHMAN: Same objection.

A. Related to this issue? No.

Q. Did you review any other documents to see if this issue was addressed in the sale agreement?

A. No.

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KARP

MR. ROTHMAN: Objection to the form.

Q. Didn't Barclays use a bridge account to administer the affiliate and nonaffiliate options customers?

A. Yes.

Q. Now, they wouldn't need that if they had taken over the accounts, would they?

MR. ROTHMAN: Objection to the form.

A. It was explained to me by Dan Dziemian that they set up these accounts, these bridge accounts because they felt that -- they did not take the responsibility for the final payment related to these options. But that is not something that has been agreed to in any way by LBI.

Q. So it was Barclays -- what the Barclays folks said to you was that they didn't fully take over the accounts, those accounts?

MR. ROTHMAN:

MR. ROTHMAN: To the form.

A. The way it was explained to me was that they took over the entire relationship with OCC and -- but they felt that they took over the clearance and settlement obligation related to

36 (Pages 138 to 141)

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1 KARP
2 those accounts at the OCC and they were not
3 responsible for the affiliates and certain other
4 positions and, therefore, were setting up these
5 bridge accounts to in effect charge back the LBI
6 estate for any costs and credit the LBI estate
7 for any profits on those transactions.
8 But that, as I said, that was their
9 doing and their undertaking. It is not
10 something that has been agreed to or accepted.
11 Q. Did Deloitte ever express to Barclays
12 any kind of disagreement with what they were
13 doing or the position they were taking?
14 A. We discussed it with Barclays to
15 understand what it was about and why they were
16 doing it. And just obtain facts.
17 Q. And then after obtaining that
18 information, did you go back to Barclays or take
19 any other course of action?
20 A. Anything else was done with counsel.
21 Q. And when did that occur?
22 A. In early October, I began having a lot
23 of discussions with Dan Dziemian related to
24 certain activities that had been happening at
25 OCC. So it would have been at about that time

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1 KARP
2 Q. And John Manley?
3 MR. ROTHMAN: Objection, asked and
4 answered.
5 MR. THOMAS: I asked that?
6 MR. ROTHMAN: About three times
7 already.
8 Q. Who is John Manley?
9 A. He is a -- he was a partner at
10 Deloitte. He is now retired.
11 Q. Veronica Lawry?
12 A. She is a member of our team.
13 Q. At Deloitte?
14 A. At Deloitte.
15 MR. THOMAS: Let me go ahead and show
16 you a document we will mark as 573.
17 (Exhibit 573, privilege log marked for
18 identification, as of this date.)
19 Q. Have you seen this document before?
20 A. No.
21 MR. ROTHMAN: This is a privilege log
22 that I believe was prepared by Hughes
23 Hubbard.
24 MR. THOMAS: Right.
25 MR. ROTHMAN: So if you have questions

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1 KARP
2 that we started our discussions.
3 Q. Early October 2008?
4 A. 2008. Yes.
5 Q. Can you remember anything else
6 relevant that anyone from Barclays said on this
7 issue?
8 MR. ROTHMAN: Objection to the form.
9 A. No.
10 Q. Would you agree that -- or is it your
11 understanding that Barclays acquired LBI's
12 business as a futures commission merchant?
13 MR. ROTHMAN: Objection to the form.
14 A. My understanding is that they acquired
15 the customer business.
16 Q. What's the distinction you're drawing?
17 A. That LBI had its own proprietary
18 positions that were not, would not be part of
19 the customer business.
20 Q. And in connection with that, with
21 respect to the customers, did Barclays acquire
22 LBI's futures customers accounts?
23 A. That's my understanding.
24 Q. Who is Jeff Margolin.
25 A. He is an attorney at Hughes Hubbard

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1 KARP
2 about it, you should direct it to Hughes
3 Hubbard, not a witness.
4 MR. THOMAS: I am going use it to ask
5 some questions. If you want to instruct not
6 to answer based on privilege, you can. But
7 I'm really just using it as a prop because
8 it has dates, it does have some pertinent
9 information on it.
10 Q. There is a reference in the
11 description to the item 10, "Analysis of asset
12 purchase agreement." Do you see that?
13 A. Yes.
14 Q. Did Deloitte ever prepare analysis of
15 the asset purchase agreement?
16 MR. ROTHMAN: No, I am sorry, I
17 object. I'm not going to let her answer
18 questions about the -- try to delve into the
19 privilege log.
20 MR. THOMAS: I'm not delving into what
21 the document is.
22 MR. ROTHMAN: First of all, you have
23 already asked her if she read the APA,
24 Deloitte has read the APA. We have been
25 through this already. Now you are trying to

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1 KARP
2 do it in a way that I think is improper.
3 MR. THOMAS: It is simply asking --
4 the question was, did Deloitte ever prepare
5 an analysis of the asset purchase agreement.
6 That can't possibly be privileged. It is
7 certainly a legitimate question.
8 MR. ROTHMAN: You can go ahead and
9 answer.
10 A. No.
11 MR. TECCE: Mr. Thomas, I don't mean
12 to interrupt you. There is an page attached
13 to the back of this that you may want.
14 MR. THOMAS: Let me go ahead and get
15 that back.
16 MR. ROTHMAN: We can rip that out.
17 Q. There is an entry number 12, there is
18 a reference, again, Marlo Karp is you, who works
19 for Deloitte?
20 A. Yes.
21 Q. And Felicia Sokalski also works for
22 Deloitte?
23 A. Yes.
24 Q. There is a reference in the
25 description to Lehman balance sheet, e-mail and

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1 KARP
2 A. It was a balance sheet --
3 MR. ROTHMAN: Objection to the form.
4 A. It was a balance sheet for LBI which
5 if I remember correctly basically was trying to
6 show what the result of the sale would do to the
7 financial position, the balance sheet of LBI.
8 Q. Was that relevant to your work at this
9 time in any way?
10 MR. ROTHMAN: Objection to the form.
11 A. No. We were asked to not perform any
12 work at that time until the customer account
13 transfers had been completed.
14 Q. So when did you actually first start
15 doing work?
16 A. Not until after September 26, 2008.
17 Q. And again, I may have asked this
18 already, but your primary focus after
19 September 26, 2008, was what?
20 A. Was to get the information on the
21 assets that were under the trustee's control.
22 Q. Who is Todd Scarpino?
23 A. He is a member of the Deloitte team.
24 Q. I was going to ask you about one more
25 of these here. Item 22, dated September 25,

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1 KARP
2 attachment regarding Lehman balance sheet.
3 A. Yes.
4 Q. Does this refresh your recollection as
5 to whether Deloitte had begun working on a
6 Lehman balance sheet as of or about
7 September 19, 2008?
8 MR. ROTHMAN: Objection to the form.
9 A. We didn't do any work on the balance
10 sheet.
11 Q. Deloitte never did work on the balance
12 sheet?
13 A. Not -- we received a balance sheet as
14 part of this e-mail. We did not do any work on
15 it.
16 Q. I am going to, correct me if I am
17 wrong, I assume the attached balance sheet would
18 not be privileged, so I am going to ask if you
19 recall what balance sheet that was?
20 MR. ROTHMAN: You can answer.
21 A. It is a balance sheet that was
22 provided, I believe, by Weil Gotshal that showed
23 about 185 billion in assets.
24 Q. So was this a balance sheet for LBHI
25 or LBI?

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1 KARP
2 that's an e-mail regarding trustee requests
3 relating to LBI positions and assets. Is that
4 the work that you are referring to when you say
5 you started your first -- your work was largely
6 focused on -- was related to LBI's assets and
7 positions?
8 MR. ROTHMAN: I am going to instruct
9 her not to answer on the grounds that it can
10 disclose the requests that were being made.
11 Q. All right, you can put that document
12 aside. To come back to your earlier answer,
13 when you said, referred to working on LBI's
14 assets, the assets under the trustee's control,
15 would that include analysis of LBI positions at
16 the time?
17 A. It would include every asset.
18 Q. Let me go ahead and show you the
19 document we will mark as Exhibit 574.
20 (Exhibit 574, document Bates stamped
21 DT 264 through 266 marked for
22 identification, as of this date.)
23 Q. Have you had a chance to review the
24 document?
25 A. Yes.

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1 KARP
2 Q. Do you recognize that as an e-mail you
3 received on October 9, 2008?
4 A. Yes.
5 Q. Can you describe the general subject
6 matter of the e-mail?
7 A. Yes, we had had a meeting with DTC to
8 discuss the settlements that occurred the
9 Monday, Tuesday, Wednesday after bankruptcy. So
10 that's 22nd, 23rd and 24th. And there was a
11 number of 376 million in settlements and we had
12 asked for the details about those settlements
13 and this was in response to that.
14 Q. Does this relate to any assets that
15 went over to Barclays?
16 A. There were some of these assets that
17 went over to Barclays, yes.
18 Q. And can you describe what kind of
19 bucket those assets fall into? Are any of these
20 clearing box assets?
21 MR. ROTHMAN: Objection to the form.
22 A. I don't remember specifically what
23 these assets related to.
24 Q. Was this part of your work to try to
25 make sure you understood what assets LBI still

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1 KARP
2 Q. Was there cooperation and coordination
3 in this time period, November of 2008, between
4 Alvarez & Marsal and Deloitte and/or the trustee
5 to your knowledge?
6 MR. ROTHMAN: Objection to the form.
7 A. At that time, at that time, we
8 continued to work on our own efforts, we did not
9 continue to work with Alvarez & Marsal.
10 Q. There is at least some exchange of
11 information?
12 MR. TECCE: Object to form.
13 MR. ROTHMAN: Same objection.
14 A. I don't believe that we gave
15 information to Alvarez & Marsal. There was a
16 confidentiality agreement with JP Morgan Chase
17 that we had signed and I don't believe that we
18 could have given them the JP Morgan information.
19 Q. In the Alvarez e-mail on the second
20 page, next to balance sheet, it says, "We wish
21 to review the carve-out balance sheet assumed by
22 Barclays and the remainder balance sheet of LBI
23 as of 9/19."
24 Do you see that?
25 A. Yes.

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1 KARP
2 had?
3 A. Yes.
4 Q. Let me show you a document we will
5 mark as 575.
6 (Exhibit 575, document Bates stamped
7 DT 402 through 404 marked for
8 identification, as of this date.)
9 A. OK.
10 Q. Have you seen this document before?
11 A. I don't think so.
12 Q. This is an e-mail chain involving
13 Alvarez & Marsal and Deloitte, and Felicia, and
14 on the second page, there is a discussion
15 collateral and cash transfers on or about 9/19.
16 Do you see that?
17 A. Yes.
18 Q. Is this part of the same work effort
19 that you described previously or is this
20 something different? Do you know?
21 A. I need to read it. I mean, this looks
22 like an agenda from Alvarez & Marsal as to what
23 they wanted to discuss. I don't know that --
24 what the result of that discussion was. I don't
25 know if I attended this meeting.

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1 KARP
2 Q. Do you understand it to be asking to
3 see the 9/19 LBI balance sheet that Deloitte has
4 been working on?
5 MR. ROTHMAN: Objection to form.
6 A. Given the date, there would have been
7 no such balance sheet at that time that we would
8 have been working on or having been close to
9 completed if we had just started it.
10 Q. Do you have any understanding what
11 have is being referred to here then?
12 A. It could be the balance sheets
13 provided by Weil which showed the position as
14 of -- I don't remember if it was the 19th or the
15 18th and what the transaction was going to leave
16 it with.
17 Q. Did you ever see that balance sheet?
18 A. Yes.
19 Q. And how did you -- when did you
20 receive that?
21 A. I believe on the 19th of September of
22 '08.
23 Q. And can you describe what it looked
24 like?
25 A. I believe it showed total assets of

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1 KARP
2 185 billion total liabilities and capital of 185
3 billion and then it had a column of for what
4 was -- what had been sold to Barclays and then
5 what would be remaining.
6 Q. What was the purpose of Deloitte being
7 provided with that on the 19th of September,
8 provided by LBHI?
9 MR. ROTHMAN: I'm not sure the
10 testimony is that they got it directly from
11 LBHI.
12 Q. Well, --
13 MR. ROTHMAN: Why don't you clarify
14 that first.
15 MR. THOMAS: Sure.
16 Q. How did you -- do you know how you got
17 the Weil balance sheet?
18 A. The document referred to on the log, I
19 got it from Felicia.
20 Q. Do you know how Felicia got it?
21 A. I believe she got it from counsel,
22 trustee's counsel, but I don't know for sure.
23 Q. Let me show you a document we will
24 mark as 576.
25 (Exhibit 576, document Bates stamped

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1 KARP
2 sentence in the middle of the page where it says
3 we certainly understand and respect Barclays'
4 rights to certain 3-3 funds under the APA."
5 Do you see that sentence?
6 A. Yes.
7 Q. Do you have an understanding of what
8 certain 3-3 funds is referring to?
9 MR. ROTHMAN: Objection to the form.
10 A. Based upon the subject line, my
11 conclusion would be that it's the customer
12 reserve formula funds that were deposited.
13 Q. Is that the same as the 15c3-3?
14 A. Yes.
15 Q. Did you understand Barclays, as part
16 of the sales transaction was entitled to certain
17 15c3-3 funds or equivalent securities?
18 A. I understood that Barclays was
19 claiming it, not that they were necessarily
20 entitled to it.
21 Q. Here it says, "We certainly understand
22 and respect Barclays' rights to certain 3-3
23 funds under the APA." Is that consistent with
24 your understanding, this is written from
25 somebody from Hughes Hubbard. Is it consistent

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1 KARP
2 DT 396 through 398 marked for
3 identification, as of this date.)
4 Q. Before I do that, just putting aside
5 how you got it, do you have any understanding
6 why it was provided to Deloitte on -- in
7 September?
8 MR. ROTHMAN: It is a yes or no
9 question.
10 A. State it again.
11 Q. Do you have any understanding of why
12 that document was provided to Deloitte in
13 September?
14 A. Yes.
15 Q. Why?
16 MR. ROTHMAN: To the extent that the
17 answer to that one would reveal
18 attorney/client communications, I am going
19 to instruct you not to answer.
20 A. I can't answer.
21 Q. This is Exhibit 576. This is an
22 e-mail chain dated December 3, 2008 involving
23 some individuals from Barclays and Lehman and
24 Hughes Hubbard and Deloitte. And I don't see
25 your name on it, but I want to ask you about a

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1 KARP
2 with your understanding that Barclays was
3 entitled to certain 3-3 funds?
4 MR. ROTHMAN: First of all, objection
5 to the form. Second of all, the person
6 writing this e-mail is actually not from
7 Hughes Hubbard, although I recognize it is a
8 Hughes Hubbard e-mail address.
9 MR. THOMAS: Let me follow up on that.
10 MR. ROTHMAN: Marshal was part of the
11 trustee staff, but he is not a Hughes
12 Hubbard lawyer.
13 Q. Did you have that understanding that
14 Barclays was entitled to certain C3-3 funds?
15 MR. ROTHMAN: Objection to the form,
16 asked and answered. And again I'll caution
17 you not to reveal discussions you may have
18 had with counsel about this.
19 A. I don't know which question I'm
20 supposed to answer.
21 MR. ROTHMAN: The one that Mr. Thomas
22 asked.
23 A. I don't remember at this point.
24 Q. Was it your understanding that
25 Barclays was entitled to certain 3-3 funds?

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1 KARP
2 MR. ROTHMAN: Same objection, same
3 caution to the witness.
4 A. I understand that Barclays was
5 requesting it, not necessarily that they were
6 entitled to it.
7 Q. Did you have any understanding as to
8 whether they were entitled to it?
9 A. No.
10 Q. Do you recall seeing the provision
11 relating to 15c3-3 in the clarification letter?
12 A. I believe so.
13 MR. THOMAS: I am going to show you a
14 document we will mark as 577.
15 (Exhibit 577, document Bates stamped
16 DT 517 marked for identification, as of this
17 date.)
18 Q. Do you recognize this as an e-mail
19 chain on which you were included on
20 December 18th and 19th of 2008?
21 A. Yes.
22 Q. And does this relate to the settlement
23 agreement that was ultimately reached involving
24 Barclays, JPM and other parties in December of
25 2008?

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1 KARP
2 A. Yes.
3 Q. You write, "We have some follow-ups
4 related to the Chase information that we have
5 received. It appears we have clear cash
6 balances as of 9/19. The one question that has
7 arisen based on the information provided is
8 related to the DDA account for 15c3-3."
9 Do you -- can you describe what the
10 issue is you're addressing here with respect to
11 15c3-3?
12 A. JP Morgan had provided a listing of
13 the various bank account balances that LBI held
14 at JP Morgan. The account that they listed and
15 showed as 15c3-3 account showed a negative
16 balance and we had a question as to why that
17 was.
18 Q. Did you get that resolved?
19 A. We did, it had to do with journal
20 entries that had been posted incorrectly.
21 Q. What was the correct balance?
22 MR. ROTHMAN:
23 MR. ROTHMAN: We go off the record
24 here?
25 MR. THOMAS: Sure.

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1 KARP
2 A. No.
3 Q. What settlement agreement does this
4 refer to?
5 A. I don't see where it refers to --
6 Q. The re: line?
7 A. Oh, sorry. It refers to JP Morgan's
8 claim against the LBI estate.
9 Q. Was that claim eventually settled?
10 A. No.
11 Q. It is still going on now?
12 A. Yes.
13 Q. This may be a dumb question, has that
14 been filed?
15 A. Has what been filed?
16 Q. The claim?
17 A. Yes.
18 Q. Down below, it says, "Set forth below
19 is Marlo's summary of where we stand on the
20 close of business 9/19 data."
21 Do you see that?
22 A. Yes.
23 Q. And then again over to the next page,
24 is that your summary that's referred to on the
25 first page?

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1 KARP
2 MR. ROTHMAN: My concern is this has
3 nothing to do with the Barclays issues and
4 has to do with a certain thing -- we might
5 have produced it by mistake.
6 THE VIDEOGRAPHER: The time is 2:46,
7 we are going off the record.
8 (Recess)
9 THE VIDEOGRAPHER: The time is 3:01,
10 we are back on the record.
11 Q. Ms. Karp, I understand the document we
12 were reviewing is not related to the Lehman
13 Barclays sale transaction, is that correct?
14 A. Yes.
15 MR. THOMAS: Let me go ahead and show
16 you a document we will mark as 578.
17 (Exhibit 578, document Bates stamped
18 DT 502 marked for identification, as of this
19 date.)
20 Q. Do you recognize this as an e-mail to
21 you dated December 19, 2008?
22 A. Yes.
23 Q. And Vincent Tarantino is someone who
24 works for Deloitte?
25 A. Yes.

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1 KARP
2 Q. Does he work in your group?
3 A. He was working for me on the project.
4 Q. What project was that?
5 A. The Lehman SIPC liquidation.
6 Q. And when you complete the 9/19 balance
7 sheet, how will you use that document and for
8 what purposes?
9 A. Which? The clean file?
10 Q. No, the balance sheet that's --
11 Deloitte has been working on?
12 A. I don't know. You would have to ask
13 the trustee.
14 Q. OK. You are preparing it for the
15 trustee?
16 A. Yes.
17 Q. Deloitte has been working on it for
18 over a year without any understanding of how it
19 is going to be used?
20 MR. ROTHMAN: Objection to the form.
21 A. Anything that we would know would have
22 been discussions between counsel.
23 Q. This e-mail, it says, "During the past
24 hour, I have been attempting to conduct the
25 exercise we discussed during our 1:30 call."

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1 KARP
2 referring to those moved as part of the
3 settlement agreement or back in September?
4 A. Back in September as part of the repo
5 transaction.
6 Q. And I'm sorry, I just didn't follow
7 the answer. The reason for looking at the list
8 of securities that moved back in September was
9 what again?
10 A. We were comparing it to what he refers
11 to as the POS-ALL, P-O-S-A-L-L, file which that
12 is attached which is a listing of all securities
13 that JP Morgan held on behalf of LBI with the
14 box or account designation of where and he was
15 comparing that to the securities that moved so
16 we could update and reconcile the books and
17 records of LBI.
18 Q. OK.
19 MR. ROTHMAN: Just so the record is
20 clear, the file is not actually attached to
21 the exhibit.
22 MR. THOMAS: Let me go ahead and mark
23 this separately and ask you if it is the
24 attachment to the prior document.
25 MR. ROTHMAN: Off the record.

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1 KARP
2 Do you see that?
3 A. Yes.
4 Q. Do you recall what exercise is being
5 referred to there?
6 A. Yes, he is trying to compare the file
7 of securities that moved under the repo
8 agreement with Barclays to another file that JP
9 Morgan had given us.
10 Q. What is the other file? What
11 securities are in the other file?
12 A. It is a file of all positions that LBI
13 held per JP Morgan's records.
14 Q. What is the purpose of the comparison?
15 A. If I remember correctly, there are two
16 different dates, but the purpose was to
17 understand which accounts at JP Morgan the
18 securities had been in, because there were many
19 different box -- different accounts, what they
20 call box locations for where the securities
21 could be at JP Morgan and it was a way for us to
22 understand where the -- each of the positions
23 that actually moved fit into those records.
24 Q. When you say the securities that had
25 moved from JP Morgan to Barclays, are you

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1 KARP
2 (Discussion held off the record.)
3 Q. Let's go back on the record. So as
4 part of this exercise, it was an attempt just to
5 clarify what securities had gone over to
6 Barclays or confirm that as opposed to any
7 attempt to evaluate those securities?
8 A. It was an attempt to understand where
9 those securities were located for JP Morgan's
10 books and make sure that the same corresponds
11 entry was done on the books of LBI for those
12 same locations. It was more the reconciliation
13 between what happened at JP Morgan versus what
14 happened on LBI's records.
15 And as you can see, it is transcribed
16 from a text file. It was not a file that was
17 usable for us to do comparisons and he has
18 questions on, when he converted the file, he was
19 having issues in trying to use that data.
20 MR. THOMAS: Well, thank you, I don't
21 think I have any further questions?
22 MR. ROTHMAN: I don't have any
23 questions.
24 MR. HINE: No questions here.
25 MR. TECCE: No questions.

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1 KARP
2 THE VIDEOGRAPHER: The time is 3:10,
3 we are going off the record.
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MARLO KARP

Subscribed and sworn to
before me this day
of January, 2010.

Page 168

1 KARP
2 EXHIBITS
3 Exhibit No. Marked
4 Exhibit 576 document Bates stamped DT 396 155
5 through 398
6 Exhibit 577 document Bates stamped DT 517 158
7 Exhibit 578 document Bates stamped DT 502 161
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1 KARP
2
3 CERTIFICATE
4 STATE OF NEW YORK)
5)ss:
6 COUNTY OF NEW YORK)
7 I, MARY F. BOWMAN, a Registered
8 Professional Reporter, Certified Realtime
9 Reporter, and Notary Public within and for
10 the State of New York, do hereby certify:
11 That MARLO KARP, the witness whose
12 deposition is hereinbefore set forth, was
13 duly sworn by me and that such deposition is
14 a true record of the testimony given by such
15 witness.
16 I further certify that I am not
17 related to any of the parties to this action
18 by blood or marriage and that I am in no way
19 interested in the outcome of this matter.
20 In witness whereof, I have hereunto
21 set my hand this 20th day of January, 2010.
22
23
24
25

MARY F. BOWMAN, RPR, CRR

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KARP

ERRATA SHEET

NAME OF CASE: In Re: Lehman Brothers

DATE OF DEPOSITION: 1/20/10

NAME OF WITNESS: Marlo Karp

Reason codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page ____ Line ____ Reason ____

From ____ to ____

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MARLO KARP

BCI EXHIBIT

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1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
In Re: Chapter 11
5 LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)
6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF MIKE KEEGAN

10 New York, New York

11 Friday, August 28, 2009
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17
18
19

20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24379
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<p>1 2 3 4 5 August 28, 2009 6 8:46 a.m. 7 8 9 HIGHLY CONFIDENTIAL deposition of 10 MIKE KEEGAN, held at the offices of 11 Jones Day, 222 East 41st Street, New 12 York, New York, pursuant to Notice, 13 before Francis X. Frederick, a Certified 14 Shorthand Reporter, Registered Merit 15 Reporter and Notary Public of the States 16 of New York and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 APPEARANCES: 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: JAYANT W. TAMBE, ESQ. 9 TERRY McMAHON, ESQ. 10 11 BOIES SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays Capital 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ. 16 17 HUGHES, HUBBARD & REED, LLP 18 Attorneys for the SIPA Trustee 19 1175 I Street, N.W. 20 Washington, D.C. 20006-2401 21 BY: JOHN F. WOOD, ESQ. 22 FARA TABATABAI, ESQ. 23 24 25</p>
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<p>1 2 APPEARANCES: (Cont'd.) 3 JENNER & BLOCK, LLC 4 Attorneys for the Examiner 5 330 N. Wabash Avenue 6 Chicago, Illinois 60611-7603 7 BY: DAVID C. LAYDEN, ESQ. 8 9 QUINN, EMANUEL, URQUHART, OLIVER & 10 HEDGES, LLP 11 Attorneys for the Creditors Committee 12 51 Madison Avenue - 22nd Floor 13 New York, New York 10010 14 BY: ROBERT K. DAKIS, ESQ. 15 16 17 ALSO PRESENT: 18 RAJESH ANKALKOTI, Alvarez & Marsal 19 20 21 22 23 24 25</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL 2 MIKE KEEGAN, called as a witness, 3 having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MR. TAMBE: 8 Q. Good morning, Mr. Keegan. We've 9 met a few minutes ago. My name is Jay Tambe 10 and I'm one of the lawyers at Jones Day. We 11 are counsel -- special counsel to the Lehman 12 Brothers Holdings estate. With me is my 13 colleague, Terry McMahon. I'll have the other 14 lawyers who are sitting at the table introduce 15 themselves. 16 MR. WOOD: I'm John Wood from 17 Hughes Hubbard & Reed and we represent 18 the SIPA Trustee. 19 MS. TABATABAI: Fara Tabatabai 20 also with Hughes Hubbard & Reed. 21 THE WITNESS: Excuse me. I didn't 22 hear that. 23 MS. TABATABAI: Fara Tabatabai 24 from Hughes Hubbard & Reed. 25 MR. DAKIS: Robert Dakis from</p>

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Quinn, Emanuel, Urquhart, Oliver &</p> <p>3 Hedges for the Official Committee of</p> <p>4 Unsecured Committee.</p> <p>5 MR. LAYDEN: Good morning. David</p> <p>6 Layden from Jenner & Block for the</p> <p>7 Examiner.</p> <p>8 BY MR. TAMBE:</p> <p>9 Q. Mr. Keegan, by whom are you</p> <p>10 employed currently?</p> <p>11 A. Barclays Bank, PLC.</p> <p>12 Q. And how long have you been</p> <p>13 employed by Barclays Bank, PLC?</p> <p>14 A. I've been an employee of Barclays</p> <p>15 since July of 1996. But during that time</p> <p>16 period, because of overseas assignments and</p> <p>17 things like that, I've been employed by a</p> <p>18 number of various entities within Barclays.</p> <p>19 Q. Starting in July of 1996 to the</p> <p>20 present, if you could just give us a broad</p> <p>21 overview of what your positions have been and</p> <p>22 what your duties have been at Barclays.</p> <p>23 A. Sure. In July of '96 I actually</p> <p>24 joined BZW which was the investment bank</p> <p>25 subsidiary of Barclays Bank located in London.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 I joined in London as a chief operating</p> <p>3 officer of the markets division of BZW</p> <p>4 reporting to Bob Diamond.</p> <p>5 I did that job for two years until</p> <p>6 the formation of Barclays Capital in January</p> <p>7 of 1997 -- sorry. January of 1999. And I was</p> <p>8 the C -- sorry. It was January of '97. Sorry</p> <p>9 about that. So it was 18 months as COO. Then</p> <p>10 I was -- became the first CFO of Barclays</p> <p>11 Capital when Barclays Capital was formed. I</p> <p>12 did that job until November of 1999 and then I</p> <p>13 returned to New York at that point in time as</p> <p>14 the chief administrative officer for the</p> <p>15 Barclays Capital operations in the US. I did</p> <p>16 that until 2001 when I became the chief</p> <p>17 operating officer for Barclays Capital's</p> <p>18 credit trading and investment banking</p> <p>19 businesses. And that was the position I had</p> <p>20 until I guess November '07. And at that point</p> <p>21 became head of principal credit trading which</p> <p>22 is the job I currently have.</p> <p>23 Q. Just focusing on your current job</p> <p>24 and your prior job, so starting in 2001</p> <p>25 through the present, starting sometime in 2001</p>
Page 8	Page 9
<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 it sounds like you were head of credit</p> <p>3 trading?</p> <p>4 A. No. Chief operating officer which</p> <p>5 in Barclays Capital it's different things to</p> <p>6 different people. All right? So I worked for</p> <p>7 an individual named Grant Kavalheim.</p> <p>8 Q. How do you spell that last name?</p> <p>9 A. It's K-A-V-A-H -- let me write it</p> <p>10 out.</p> <p>11 MR. STERN: We can look it up.</p> <p>12 Q. Grant was the first name?</p> <p>13 A. Yeah. Grant.</p> <p>14 Q. All right.</p> <p>15 A. K-A-V-A-L-H-E-I-M.</p> <p>16 Q. Okay.</p> <p>17 A. So Grant was head of trading and</p> <p>18 investment banking. I was his COO and as his</p> <p>19 COO, yeah, I had a bunch of different duties</p> <p>20 in charge of planning, budgeting, execution of</p> <p>21 any strategic plans that we wanted to</p> <p>22 implement. I took on responsibility for</p> <p>23 managing a number of businesses for him which</p> <p>24 included our -- initially a business called</p> <p>25 risk finance which was a credit arbitrage</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 trading business. Then I took on</p> <p>3 responsibilities for managing our loan</p> <p>4 portfolio which is the portions of the loans</p> <p>5 that we would make to clients that we would</p> <p>6 retain on our balance sheet, managing that.</p> <p>7 Took on responsibility for our distressed</p> <p>8 proprietary trading business. And, finally,</p> <p>9 more recently, our real estate business.</p> <p>10 Q. And if I understand the change in</p> <p>11 the nature of your duties starting in November</p> <p>12 2007, you specified that date as the date at</p> <p>13 which you became head of prime credit trading?</p> <p>14 A. No. Principle credit trading.</p> <p>15 Q. Principle.</p> <p>16 A. So Grant departed the firm. All</p> <p>17 of the trading businesses rolled up to Jerry</p> <p>18 del Missier. Jerry del Missier had another</p> <p>19 individual by the name of Justin Bull who was</p> <p>20 his chief operating officer. So basically my</p> <p>21 chief operating officer duties for credit went</p> <p>22 away and I was left with what was my trading</p> <p>23 and risk management supervisory</p> <p>24 responsibilities.</p> <p>25 Q. Okay.</p>

Page 10	Page 11
<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. And I was renamed as head of</p> <p>3 principle credit trading.</p> <p>4 Q. So starting with November 2007</p> <p>5 through to the present if you could describe</p> <p>6 who you directly reported to.</p> <p>7 A. November 2000?</p> <p>8 Q. Seven.</p> <p>9 A. Seven?</p> <p>10 Q. Yeah.</p> <p>11 A. As of November 2007 until today I</p> <p>12 directly report to Jerry del Missier.</p> <p>13 Q. And who are the folks who directly</p> <p>14 report to you, if any?</p> <p>15 A. Today it's Fred Orlan. It is an</p> <p>16 individual named Rene Canezen. It's an</p> <p>17 individual named Matt Barrett. An individual</p> <p>18 named Haejin Baek. And I'm pretty sure</p> <p>19 that's -- I'm trying to think. That's it</p> <p>20 right now the way we're organized.</p> <p>21 Q. Okay. When we were earlier</p> <p>22 talking about some of the work you did when</p> <p>23 you were working with Grant you'd mentioned</p> <p>24 managing loan portfolios, distressed</p> <p>25 proprietary trading, et cetera.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Do you still do all those --</p> <p>3 manage all those types of trading?</p> <p>4 A. Yes.</p> <p>5 Q. So that's included within</p> <p>6 principle credit trading.</p> <p>7 A. Yeah. What principle credit is is</p> <p>8 any risk that we are taking as a firm in the</p> <p>9 credit space in a non-market-making capacity</p> <p>10 is supposed to roll up into principle credit.</p> <p>11 It doesn't but...</p> <p>12 Q. Other than the duties you have</p> <p>13 with respect to the principle credit trading</p> <p>14 business in the past twelve months have you</p> <p>15 been involved in any strategic initiatives</p> <p>16 by -- taken on behalf of Barclays?</p> <p>17 A. I was involved in the Lehman</p> <p>18 acquisition, yes.</p> <p>19 Q. And other than the Lehman</p> <p>20 acquisition, have you been involved in any</p> <p>21 other strategic initiatives, acquisitions,</p> <p>22 dispositions, things of that nature?</p> <p>23 A. Nothing major.</p> <p>24 Q. Broad terms, if you could just</p> <p>25 describe your involvement in the Lehman</p>
Page 12	Page 13
<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 transaction.</p> <p>3 MR. STERN: Jay, if it helps, I</p> <p>4 have a September 2008 monthly calendar,</p> <p>5 you know, just to keep the days of the</p> <p>6 week in mind. I just put that up here</p> <p>7 in front of Mr. Keegan.</p> <p>8 MR. TAMBE: That's perfectly fine.</p> <p>9 A. So my role I guess began Friday</p> <p>10 the 12th. And was one of the people who was</p> <p>11 brought in to examine portions of Lehman's</p> <p>12 balance sheet and operations in preparation</p> <p>13 for a bid to buy Lehman Brothers from what</p> <p>14 looked like it was going to be the -- in fact,</p> <p>15 the government at that point in time.</p> <p>16 Q. And over the course of that next</p> <p>17 week, starting on the 12th going forward say</p> <p>18 ten days until the 22nd of September, if you</p> <p>19 could give us a little bit more detail in</p> <p>20 terms of what tasks you were doing in</p> <p>21 connection with the Lehman transaction.</p> <p>22 A. Sure. I had responsibility</p> <p>23 specifically for looking at the commercial</p> <p>24 real estate portfolio, their loan portfolios,</p> <p>25 their private equity investments, and their</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 corporate credit/debt positions.</p> <p>3 And, you know, that process took</p> <p>4 basically, you know, the weekend through -- I</p> <p>5 don't know -- 3:00 or 4:00 on Sunday when it</p> <p>6 was determined that the trade wasn't going to</p> <p>7 happen.</p> <p>8 Q. After that Sunday -- the Sunday</p> <p>9 you're referring to is the 14th of September,</p> <p>10 correct?</p> <p>11 A. I believe it was, yes.</p> <p>12 Q. After Sunday, the 14th, did you</p> <p>13 have any further involvement?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Okay.</p> <p>16 A. On Monday, the 15th, somewhere</p> <p>17 around 10, 10:30, 11:00 I got a phone call to</p> <p>18 show up to the conference room at Lehman</p> <p>19 Brothers' offices on the 32nd floor and to</p> <p>20 await instruction.</p> <p>21 Q. And did some instructions arrive?</p> <p>22 A. They did. I believe it was -- I'm</p> <p>23 not sure if it was actually but I believe it</p> <p>24 was Richard came in and told us that we had an</p> <p>25 opportunity to buy the US operations of Lehman</p>

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M. KEEGAN - HIGHLY CONFIDENTIAL

Brothers I guess prior to bankruptcy because -- at least with respect to the broker/dealer. The broker/dealer was not filed on that Monday morning.

Q. And so after you were told about that opportunity what involvement did you have in those efforts to purchase Lehman's operations?

A. So I was asked to take a look at, you know, the potential assets that we were buying within the categories that I explained to you before. And it did not include any commercial real estate because our board told us we weren't eligible to take over any commercial real estate. It did not include any private equity investments because during the work we did over the weekend we determined that the private equity investments were not something that we wanted to take.

It did not include any of the loan portfolios, should not have included any of the loan portfolios, because that was another asset category we determined we did not want to take.

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M. KEEGAN - HIGHLY CONFIDENTIAL

So it basically came down to, within my world, what I looked at, was the corporate debt securities that were on the books of the broker/dealer for the most part.

Q. And just to be clear on what you mean by corporate debt securities, what do you mean by that?

A. Commercial paper, bonds, credit link notes. Any other, you know, security instruments that they might have housed in broker/dealer that, you know, involved corporate credit risk.

Q. And for this asset class, corporate debt securities, would you typically be provided with a list of CUSIP numbers, identifiers for the securities that were held by the broker/dealer?

MR. STERN: I'm just going to object to the form. Are you asking him if he was? It says would you typically have been.

Q. That's fine. I could restate the question. Are you provided with CUSIP numbers out of the debt securities held by the

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M. KEEGAN - HIGHLY CONFIDENTIAL broker/dealer?

A. Over the weekend we were. And then on Monday I'm not sure that we were given a complete list again but we were shown -- it was indicated what was on the books of the broker/dealer and I guess we had a list because I had determined whether we looked at it or not -- or didn't look at it over the weekend. That was the first step. You know, had we seen it before. We should have.

And then for particular areas where we identified over the weekend as being problematic with respect to value or other concerns, yes, we were given a CUSIP -- we asked for and were given a CUSIP list.

So Lehman obviously hadn't planned on going bankrupt and they were totally unprepared for the whole process on Monday so it was a struggle to get any information quite frankly.

Q. And throughout that week, the week of the 15th of September, was the focus of your efforts limited to analyzing the corporate debt securities aspect of the

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M. KEEGAN - HIGHLY CONFIDENTIAL portfolio or did you do other things as well?

A. It was primarily that. I also was more or less coordinating the communication internally between other individuals that had responsibility for various parts of the portfolio -- of Lehman's portfolio and analyzing it. And our team just -- and that's -- no one said, Mike, you're -- you know, you're in charge. Just that I'm more senior than the other guys. So I know -- I know Rich. I know Archie Cox. People like that.

I worked on the -- securing -- we were going to make a DIP loan to Lehman for the week and looking at the collateral associated with the DIP loan and how much -- what collateral might be available for the DIP loan and how much we might be willing to provide. That was principally it.

Q. And the loan that you're referring to as the DIP loan was that, in fact, extended by Barclays to Lehman?

A. It was.

Q. And in what amount?

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 A. I think it was \$500 million. I'm
3 not positive what credit finance determined.
4 The collateral was Newburger Berman property.
5 **Q. And just to be clear, this DIP**
6 **loan is different than the tri-party repo or**
7 **any other repo --**
8 A. Absolutely, yeah.
9 **Q. You said you were -- you played a**
10 **coordinating role to some extent during that**
11 **week. You mentioned two names. I believe you**
12 **mentioned Rich Ricci. I think you mentioned**
13 **Rich but that was Rich Ricci?**
14 A. That's Rich Ricci, yes.
15 **Q. And Archie Cox, right?**
16 A. Yes.
17 **Q. Who else were you coordinating**
18 **with during that week?**
19 A. Jonathan Hughes, our legal
20 counsel. A few conversations with Patrick
21 Clackson.
22 **Q. And who is Mr. Clackson?**
23 A. He's the chief financial officer
24 of Barclays.
25 **Q. Were you involved at all in**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 done with repo would have rolled up to him.
3 The exposures, if any, on derivative
4 contracts.
5 **Q. Anyone else in this coordination**
6 **circle that you --**
7 A. That was pretty much it. There
8 was other people that -- like I said, I was
9 not in the coordination but I was working with
10 our guys in credit on the DIP loan. A guy
11 named Mark Manski and Ian Prior on that. I
12 had conversations with James Walker. James
13 was controller of the US. Another lawyer
14 named Jason White. Jason was working on the
15 DIP loan. And Gerard LaRocco I guess as well.
16 And Gerard was working on putting a repo
17 facility in place.
18 **Q. Anyone else?**
19 A. Not that I -- not that I remember.
20 I'm not saying there wasn't. I just don't
21 remember.
22 **Q. Were you part of the group of**
23 **people from Barclays that was negotiating the**
24 **terms of the transaction with the folks from**
25 **Lehman?**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 negotiating --
3 MR. STERN: Excuse me. Excuse
4 me. I don't know if you -- if you
5 completed your answer.
6 King.
7 THE WITNESS: Oh, the guys I was
8 coordinating with. Sorry. I thought
9 you were looking upward, not downward.
10 MR. STERN: It's a gen -- just to
11 clarify, it's a general question about
12 all the people he was coordinating with.
13 Not just the more senior people.
14 MR. TAMBE: That's fine.
15 **Q. Let's go through the list of**
16 **everyone you were coordinating with. You got**
17 **to Mr. Clackson. Mr. King.**
18 A. Right. So Stephen King was
19 responsible for looking at all of the ABS and
20 mortgage -- residential mortgage assets with
21 Lehman Brothers. Similar role to what I had
22 on the credit side. John Mahon took that
23 responsibility for, I guess you would call
24 them the rates, assets, government bonds
25 principally. Anything that they might have

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 A. I wouldn't say I was negotiating
3 the terms of the transaction but I was
4 involved in -- you know, I was also involved
5 on Thursday.
6 **Q. And you say you were also involved**
7 **on Thursday. What do you mean by that?**
8 A. So we struck a deal on Monday in
9 effect as to what we were going to buy. And
10 then -- you know, so I worked from, you know,
11 at Lehman from whatever time, 10:30 in the
12 morning, 10:00 to roughly 2:30, 3:00 in the
13 morning, Tuesday morning. Went and got some
14 sleep. Tuesday was more worried about other
15 things in our world than I was worried about
16 anything in Lehman's world whose world was
17 melting down. And more focused on that
18 Tuesday and Wednesday.
19 And then Thursday afternoon I got
20 called in around 4:00 to come over again to
21 Lehman by Rich to start taking a look at the
22 inventories that were coming in related to,
23 you know, an effective settlement of the asset
24 purchase to make sure we were getting, you
25 know, what we bought and everything we bought.

Page 22	Page 23
<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 And Stephen was there as well and</p> <p>3 John was back in UK at that point in time.</p> <p>4 Q. And the Stephen you're referring</p> <p>5 to is Stephen King.</p> <p>6 A. Yes.</p> <p>7 Q. And the John you were referring to</p> <p>8 is who?</p> <p>9 A. John Mahon.</p> <p>10 Q. Have you ever seen a copy of the</p> <p>11 Asset Purchase Agreement between Lehman and</p> <p>12 Barclays?</p> <p>13 A. Only in preparation for this.</p> <p>14 Prior to that, no.</p> <p>15 Q. So it's fair to say the first time</p> <p>16 you ever laid eyes on the Asset Purchase</p> <p>17 Agreement was sometime in the past couple</p> <p>18 weeks.</p> <p>19 A. Yeah. I saw a version of the</p> <p>20 agreement early on. I was asked a specific</p> <p>21 question which escapes me now why I was given</p> <p>22 the agreement. But it was very -- it was</p> <p>23 specific to, you know, is this worded</p> <p>24 properly, yes or no. And I just don't</p> <p>25 remember what it was.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And you say it was early on.</p> <p>3 Would you put it during that week of the 15th?</p> <p>4 A. Yeah. During the week prior to</p> <p>5 Thursday, I believe.</p> <p>6 Q. And the provision you were shown,</p> <p>7 were you shown that provision in the signed</p> <p>8 APA or an APA that was being drafted?</p> <p>9 A. I think it was a draft.</p> <p>10 Q. And who showed you that provision?</p> <p>11 A. I think it was the legal</p> <p>12 department. It may have been the finance</p> <p>13 department. I don't remember.</p> <p>14 Q. You don't down remember the</p> <p>15 substance of the discussion.</p> <p>16 A. The substance was --</p> <p>17 MR. STERN: If it was a discussion</p> <p>18 with legal, don't talk about the</p> <p>19 substance.</p> <p>20 THE WITNESS: I don't remember who</p> <p>21 it was with.</p> <p>22 Q. Okay. So what was the substance</p> <p>23 of the discussion?</p> <p>24 MR. TAMBE: He doesn't know if it</p> <p>25 was with a lawyer.</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 MR. STERN: Well, since it may</p> <p>3 have been with a lawyer I think I'll</p> <p>4 instruct you not to answer because it</p> <p>5 may have been a privileged conversation.</p> <p>6 THE WITNESS: Okay.</p> <p>7 A. I don't know then.</p> <p>8 MR. STERN: If you remember what</p> <p>9 provision you discussed I think that's</p> <p>10 fine.</p> <p>11 A. No, I don't. If you put some</p> <p>12 documents in front of me I might remember but</p> <p>13 right now I don't remember.</p> <p>14 Q. There's a document that's been</p> <p>15 referred to as the clarification letter. Does</p> <p>16 that term have any meaning to you?</p> <p>17 A. I'm not sure what that is.</p> <p>18 Q. Okay. Did you have any</p> <p>19 understanding that there were features of the</p> <p>20 transaction that changed over the course of</p> <p>21 that week, the week of the 15th?</p> <p>22 A. Oh, yeah. Yes, I did.</p> <p>23 Q. And what's your understanding of</p> <p>24 the features of the deal that changed over the</p> <p>25 course of that week?</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. All right. So Monday night when I</p> <p>3 left we had come to a conclusion as to what we</p> <p>4 would buy and what we wouldn't buy. There</p> <p>5 were assets -- you know, we did have problems</p> <p>6 with the valuations with a number of the</p> <p>7 assets that Lehman had on the books. And</p> <p>8 overall our conclusion from the weekend was</p> <p>9 that Lehman was aggressive with the rest of</p> <p>10 the valuations. And, you know, we went back</p> <p>11 to them on Monday and told them that, you</p> <p>12 know, we didn't agree with certain prices. We</p> <p>13 also went back to them with the knowledge that</p> <p>14 the market was melting down and that that deal</p> <p>15 wasn't closing until the end of the week,</p> <p>16 saying that, you know, we need to put a</p> <p>17 haircut on these assets because the volume of</p> <p>18 the assets plus the timing -- you know, we're</p> <p>19 trying to predict what the assets of are going</p> <p>20 to be worth on Thursday, Friday when the deal</p> <p>21 closes. We know Lehman's employees have all</p> <p>22 lost their jobs in effect as of right now and</p> <p>23 they're not too focused on marketing the</p> <p>24 inventory, et cetera.</p> <p>25 So we had proposed some haircuts</p>

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2 to them. It was assets that we thought were
3 materially -- you know, relative to those
4 assets themselves, materially mismarked and we
5 went back to Lehman on those and told them
6 where we thought the valuation of those assets
7 were. Some of those we agreed. Some of those
8 weren't agreed. And we told them to keep the
9 assets.
10 I've lost my focus on the
11 question. Could you just repeat the question?
12 Q. The question was about what the
13 features of the deal that changed over the
14 course of the week.
15 A. Okay. So that was the deal. So
16 we basically came to a definitive list of what
17 we said we would purchase in effect.
18 Q. I just want to drill down a little
19 bit on a couple of things you said.
20 MR. STERN: Just for
21 clarification, we've talked about the
22 status as of Monday and then you're
23 going to clarify that and then you'll go
24 to the changes.
25 MR. TAMBE: Yeah.

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2 reach an agreement with Lehman on on valuation
3 were those excluded from the list of assets?
4 A. That's correct.
5 MR. STERN: Let me just pause.
6 I'm sorry. For the reporter. There's a
7 question "And others you didn't." What
8 do you have as the answer?
9 (Discussion held off the record.)
10 BY MR. TAMBE:
11 Q. In round numbers, for the
12 valuation adjustments or haircuts where you
13 did reach an agreement --
14 A. I don't know.
15 Q. \$5 billion?
16 A. No idea.
17 Q. Have you ever heard about a
18 \$5 billion adjustment or mark-down in the book
19 value of Lehman's assets around that period of
20 time?
21 A. No. Again, only in preparation
22 for this deposition. But not otherwise.
23 Q. When you said you proposed
24 haircuts or valuation adjustments to Lehman on
25 Monday, was there a document that had

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2 MR. STERN: Okay. That's fine.
3 Q. You had some concerns about the
4 valuations of the assets on Monday, correct?
5 Lehman's valuations.
6 A. Yeah.
7 Q. And you went back to them and
8 proposed haircuts on these assets.
9 A. Well, we proposed valuation
10 adjustments and haircuts, yes.
11 Q. Do I gather from your answer that
12 on some of the haircuts or valuation
13 adjustments you proposed you reached agreement
14 with Lehman?
15 A. On some of them, yeah.
16 Q. And others you didn't?
17 A. No. Other's they just thought we
18 were nuts.
19 Q. On the ones where you reached an
20 agreement with Lehman as to the haircut or the
21 valuation adjustment, were those included then
22 in the list of assets that Barclays would be
23 purchasing?
24 A. Yes.
25 Q. And the ones that you did not

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2 asset-by-asset proposed mark-downs?
3 A. Yeah. There was a period -- there
4 was an asset -- there was asset-by-asset where
5 we thought we had problems with valuations.
6 But then there was also a summary where we
7 just said that, you know, we're talking so
8 much -- you know, we're taking on so much
9 inventory, the market is melting down, you
10 aren't getting your hands on it till Thursday.
11 You know, what do you need to protect yourself
12 between now and Thursday or Friday. So we can
13 manage the assets if the deal closes, right?
14 So that was the Monday night
15 process. And I have no idea what the number
16 actually added up to. We weren't targeting a
17 number or anything like that. We were just
18 saying based on this type of asset, based on
19 what's going on in the market, how much
20 protection do you think you need between then.
21 Q. Just to get a better understanding
22 of your proposal that Barclays made, was it by
23 asset category or was it even more granular,
24 particular asset by asset?
25 MR. STERN: Objection to the form.

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Q. Do you understand my question?

A. Ask it again. Or repeat it.

Q. The question I'm asking --

MR. STERN: I'm objecting to the proposal term.

MR. TAMBE: That's fine.

Q. You proposed some haircuts or valuation adjustments, right?

A. Yeah. By category we said we think we need --

Q. When I use the word proposal that's what I'm talking about, okay?

A. Okay.

Q. That proposal. Was it by asset category or by specific asset?

A. If we had a valuation adjustment it was by asset. And if we had a haircut it was by category.

Q. Do you recall any of the category type haircuts that you proposed?

A. The actual amount?

Q. Yeah.

A. No, I don't. Off the top of my head I don't know. I'd have to look at the

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of what inventory we got and then just do a simple comparison back to what we bought Monday and say, Yeah, it's the same list. It wasn't the same list. And, in fact, there was a huge delay in us getting anything back, you know. We had wired out through JPMorgan money and they were supposed to deliver us securities and were having difficulties delivering us securities for some reason. So there was a long delay. Several hours.

And my recollection is around 8:00 at night, you know, we started getting stuff in and looking at it. We might have started getting it a little bit earlier, around 7, but we started looking at it.

But about 8:00 at night on Thursday night we noticed that this wasn't the inventory that we had agreed to purchase on Monday. It was different. And it included a lot of the inventory that we thought was overvalued. At least the initial deliveries were a lot of what we thought was overvalued in the mortgages area, mortgage agencies, that we said we couldn't come to an agreement with

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documents.

Q. But you believe there's a document or documents from Monday which would contain that information.

A. There was a Monday -- there was a document that contained that information on the Monday, okay? That deal didn't happen so I have no idea if that still exists or doesn't exist.

Q. All right. We got down this discussion talking about how the deal changed or how features of the deal changed during that week. That deal that was being discussed on Monday, did that deal get done?

A. So the deal on Monday, okay, in the context of the bigger deal, I guess yes, it got down. But in the context of what I was looking at, which was the purchase of the inventory, that aspect of the deal didn't get done, okay?

When I showed up on Thursday night there was a -- I got there around 4:00. Somewhere around there. And I expected to take a look at, you know, the settlement list

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Lehman on valuation and we were leaving behind.

So it was at that point I learned for the first time that the agreement had changed and apparently sometime on Tuesday the Federal Reserve came in to us and said -- you know, it's been relayed to me by third parties, I have no idea what they actually said -- but, in effect, what I've been told, if you guys want the deal to go through you need to take us out of our repo. And so the construct of the deal changed from a purchase of inventory to taking an assignment of repo.

Q. And who described that change in the nature of the deal to you?

A. Could have been Ian Lowitt from the Lehman side. It could have been Rich. It could have been Jonathan Hughes. It could have been -- I don't know. I mean, I was kind of stunned when I heard it. But I don't remember exactly who told me that.

I do know what I did after that is I had a conversation with Ian Lowitt, and said, "Ian, we're getting stuff we didn't

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 want. You need to take it back and give us</p> <p>3 the stuff we bought."</p> <p>4 And he explained that he couldn't</p> <p>5 do that because even though they hadn't filed</p> <p>6 bankruptcy, the counterparties to the repo for</p> <p>7 the securities company were grabbing</p> <p>8 collateral and liquidating it on them. And</p> <p>9 they didn't have the inventory we bought</p> <p>10 anymore. They only had what was in repo at</p> <p>11 the Fed.</p> <p>12 Q. Did you have any discussions with</p> <p>13 Ian Lowitt or others about finding additional</p> <p>14 inventory beyond the inventory that had been</p> <p>15 identified on Monday?</p> <p>16 A. Yeah. Because we had value -- we</p> <p>17 were getting, for instance, these mortgage</p> <p>18 securities, agency mortgage securities. I</p> <p>19 think the number, and I don't recall, Stephen</p> <p>20 would know the exact number, but I think we</p> <p>21 thought the adjustment should be as much as a</p> <p>22 billion eight of new securities. And Lehman</p> <p>23 did not agree with us. So those securities</p> <p>24 were to be left behind. And then all of a</p> <p>25 sudden they show up in our box. Our</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 inventory. And so we knew they were marked</p> <p>3 wrong. Or we believed they were marked wrong.</p> <p>4 And, therefore, we were, you know,</p> <p>5 short cushion or haircut, if you will, on the</p> <p>6 repo. And, you know, that was a concern to us</p> <p>7 because we had -- on Monday in effect</p> <p>8 negotiated, you know, what we thought was a</p> <p>9 cushion to protect us, and -- similar to a</p> <p>10 haircut on repo. And on Thursday night we</p> <p>11 were finding out that the actual repo haircuts</p> <p>12 were in effect getting absorbed by the mismark</p> <p>13 of Lehman securities.</p> <p>14 So, yeah, we needed additional</p> <p>15 collateral to protect us.</p> <p>16 Q. And did you have in mind a number</p> <p>17 or target amount of that additional</p> <p>18 collateral?</p> <p>19 A. I did not. I just -- I didn't --</p> <p>20 I didn't -- you know, we didn't -- we knew,</p> <p>21 for instance, the billion eight, but we didn't</p> <p>22 know what else we got. And we were struggling</p> <p>23 all night long to find out what we were</p> <p>24 actually getting in terms of inventory,</p> <p>25 because it came in dribs and drabs through the</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 evening because of what we believed was</p> <p>3 operational errors that JPMorgan made.</p> <p>4 MR. STERN: Let me just pause for</p> <p>5 one minute.</p> <p>6 (Discussion held off the record.)</p> <p>7 BY MR. TAMBE:</p> <p>8 Q. Did you discuss with anyone a</p> <p>9 target number for the additional collateral</p> <p>10 that Barclays was looking for after the</p> <p>11 Thursday night transfer?</p> <p>12 A. No. I did not discuss a specific</p> <p>13 number.</p> <p>14 Q. Did you discuss a range?</p> <p>15 A. No. What we were asked was -- the</p> <p>16 question we were asked was how much your</p> <p>17 haircut -- so -- we gave a number -- you know,</p> <p>18 an amount of money to the Fed, in essence,</p> <p>19 which was I think gross somewhere in the \$45</p> <p>20 million area. Okay? The Fed delivered the</p> <p>21 securities that went through JPMorgan. I have</p> <p>22 no idea if what we got was what came out of</p> <p>23 the Fed and went to JPMorgan or how JPMorgan</p> <p>24 determined what we got. All right? But we</p> <p>25 got stuff from JPMorgan.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 We were trying to find out all</p> <p>3 Thursday night, all Friday morning, what</p> <p>4 securities we got, were getting, were likely</p> <p>5 to get, what Lehman thought the value of those</p> <p>6 securities were. Right? So we could know, we</p> <p>7 could understand what the magnitude of the</p> <p>8 repo haircut that we received was.</p> <p>9 And Lehman wasn't able to provide</p> <p>10 us that information. JPMorgan wasn't able to</p> <p>11 provide us that information. And, you know,</p> <p>12 we had some general idea but not specific idea</p> <p>13 of what the haircut cushion was. And the</p> <p>14 question we were being asked was I guess the</p> <p>15 way the deal was structured initially there</p> <p>16 was some liabilities we're assuming as well,</p> <p>17 is there enough cushion to pay for those</p> <p>18 liabilities. And we couldn't answer that</p> <p>19 question.</p> <p>20 Q. Was it a feature of the</p> <p>21 transaction as you understood it that the</p> <p>22 cushion you had negotiated on Monday would be</p> <p>23 sufficient to pay for the liabilities you were</p> <p>24 assuming?</p> <p>25 A. No. Not on Monday night, no. I</p>

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2 had nothing to do -- I had no idea that there
3 were liabilities that we were assuming.

4 **Q. On Thursday was there a discussion**
5 **about ensuring that there would be enough of a**
6 **cushion to cover the liabilities that Barclays**
7 **was assuming?**

8 MR. STERN: Objection to the form.

9 A. Read the question.

10 (Record read.)

11 A. No, there was not a specific
12 discussion that there was enough cushion for
13 the liabilities that we were assuming.

14 **Q. Was there a discussion of the size**
15 **of the cushion versus the amount of the**
16 **liabilities on Thursday night?**

17 A. Not versus the liability. I had
18 no idea what the liabilities were, okay? So I
19 did not have a view of that side of the
20 transaction.

21 MR. STERN: When you're asking was
22 there a discussion, Jay, are you asking
23 a discussion that he participated in or
24 are you asking about if he knows about
25 other discussions?

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2 the question. And what we were asked was how
3 much do we think we have in haircut that could
4 plug that hole. And the difficulty that we
5 had is we didn't know how much we had in
6 haircut because we didn't have reliable
7 valuations on what we were getting. We did
8 know we were getting inventory that we had
9 valuation problems with and we had -- on those
10 items we had a relative understanding of how
11 much that was and how much shortfall you had
12 and therefore how much "haircut" would be
13 being absorbed by just valuation errors on
14 Lehman's part.

15 And then how much -- you know,
16 what do you think is kind of left over and
17 that's the question we were trying to answer
18 all day. All night.

19 **Q. Okay. And this effort of trying**
20 **to identify that question -- trying to answer**
21 **that question, did that effort continue into**
22 **the next day, the Friday?**

23 A. Yeah. It continued into Friday.

24 **Q. And did it continue after Friday?**

25 A. I'm not aware that it continued

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2 MR. TAMBE: Either way.

3 MR. STERN: Because it's
4 misleading the way you're asking it.

5 MR. TAMBE: So you have an
6 objection to form?

7 MR. STERN: I'm just trying to
8 clarify what you mean when you asked was
9 there a discussion.

10 BY MR. TAMBE:

11 **Q. Were you involved in any such**
12 **discussions, sir?**

13 A. I was told at one point in time
14 that the problem we had because of the deal
15 changing with respect to other aspects outside
16 the inventory, okay, was that Lehman had no
17 way to pay for certain liabilities that we
18 were absorbing. I'm assuming -- and this is
19 an assumption because of the issue what
20 happened with the close-out of the repos by
21 their counterparties -- that somehow that
22 would -- those liabilities were being paid for
23 in the overall structure of the deal and now
24 there was a hole in the deal.

25 And so how you plug that hole was

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2 after Friday. But what did continue after
3 Friday was the process of understanding
4 exactly what we did get and marking it
5 appropriately.

6 **Q. Now, for the collateral that was**
7 **transferred over on Thursday you did at some**
8 **point receive a valuation report from Bank of**
9 **New York for that collateral, correct?**

10 MR. STERN: Objection to the form.

11 A. We received an indication what
12 they thought the value might be.

13 **Q. And when did you receive that**
14 **indication?**

15 A. My recollection is that was Friday
16 morning because we still hadn't been able to
17 get the information out of JPMorgan and we
18 still hadn't been able to get the information
19 from Lehman Brothers. And we were pretty
20 desperate to try to understand where we were
21 at that point in time.

22 **Q. And do you recall the value that**
23 **Bank of New York but on the collateral?**

24 A. There was several different runs.
25 There was one that was above 50. There was

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 one that was 47. There was -- there were</p> <p>3 several different runs.</p> <p>4 You know, the Bank of America</p> <p>5 numbers --</p> <p>6 Q. You mean the Bank of York numbers.</p> <p>7 A. Bank of New York. Sorry. Bank of</p> <p>8 New York, correct.</p> <p>9 You can't put that much reliance</p> <p>10 on them or we couldn't put that much reliance</p> <p>11 on them because they're not the agent for</p> <p>12 Lehman. They don't have Lehman's marks. They</p> <p>13 wouldn't know securities necessarily that</p> <p>14 don't trade and aren't actively quoted. They</p> <p>15 wouldn't have reliable, accurate marks on</p> <p>16 those.</p> <p>17 Q. If they're not the agent for</p> <p>18 Lehman whose agent were they?</p> <p>19 A. They're our agent. They were</p> <p>20 seeing this stuff for the first time.</p> <p>21 Q. Did you ever make it down to the</p> <p>22 courthouse for any of hearings about this</p> <p>23 matter?</p> <p>24 A. No.</p> <p>25 Q. Did you ever talk to anyone who</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 was down at the courthouse about the</p> <p>3 courthouse hearings?</p> <p>4 A. Yeah, I did.</p> <p>5 Q. Who did you speak with?</p> <p>6 A. I spoke with Michael Klein at one</p> <p>7 point asking him how it went. I think I spoke</p> <p>8 with -- I'm drawing a blank on the guy's name.</p> <p>9 It was our restructuring guy. Dan Shapiro.</p> <p>10 MR. STERN: Mark Shapiro?</p> <p>11 THE WITNESS: Mark Shapiro. I'm</p> <p>12 sorry.</p> <p>13 Q. Do you recall anything that Mr.</p> <p>14 Klein and Mr. Shapiro told you about the</p> <p>15 courtroom proceedings?</p> <p>16 A. I was -- after the fact I was</p> <p>17 interested in knowing, you know, what</p> <p>18 happened. And, you know, is the judge going</p> <p>19 to approve the deal or not approve the deal.</p> <p>20 How did it go. And it was more along those</p> <p>21 lines.</p> <p>22 I guess during the -- while they</p> <p>23 were in the courtroom I got asked the question</p> <p>24 pretty late at night from Mark -- I think he</p> <p>25 sent an e-mail out that he was trying to get a</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 question answered. I answered that question.</p> <p>3 Q. Do you recall what the question</p> <p>4 was?</p> <p>5 A. The question as I read it were did</p> <p>6 we take any assets from JPMorgan out of the</p> <p>7 tri-party repo. And, you know, I don't know</p> <p>8 if you know what the tri-party repo was or not</p> <p>9 but --</p> <p>10 Q. When you refer to the tri-party</p> <p>11 repo what are you referring to?</p> <p>12 A. So, again, on the Monday night one</p> <p>13 of the things that was going on in addition to</p> <p>14 the asset purchase is JPMorgan came back to us</p> <p>15 and said, Listen, you guys are buying these</p> <p>16 guys. If you're buying some of the inventory</p> <p>17 can you help us out, all right, and take some</p> <p>18 of the repo of the securities you're buying</p> <p>19 and provide -- take some of the load off of</p> <p>20 them because everybody was strapped for cash</p> <p>21 after this -- strapped for cash after the</p> <p>22 bankruptcy.</p> <p>23 And so they wanted to know if we</p> <p>24 could provide any repo for what we were</p> <p>25 buying. And so we agreed to buy -- to provide</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 5 billion of repo of the inventory that we</p> <p>3 agreed to buy on Monday night.</p> <p>4 For some reason unknown to me</p> <p>5 again that proved to be about 15 billion by</p> <p>6 Thursday. And it contained securities that we</p> <p>7 did not purchase or agree to purchase on</p> <p>8 Monday night.</p> <p>9 So the first thing I was asked</p> <p>10 when I got to Lehman on Monday -- on Thursday</p> <p>11 night, sorry, not Monday -- Thursday night,</p> <p>12 was for -- Jerry del Missier called me up and</p> <p>13 said take a look at the repo with JPMorgan and</p> <p>14 tell me whether we should roll this or not.</p> <p>15 And I got the list of collateral</p> <p>16 that was in repo and there was a \$5 billion</p> <p>17 security. I have no idea what it was but I</p> <p>18 know we didn't purchase any \$5 billion</p> <p>19 notional amount of security. So I advised</p> <p>20 Jerry this is not what we agreed on Monday</p> <p>21 night. It was not what we purchased. And,</p> <p>22 you know, my recommendation would be not to</p> <p>23 roll a repo with JPMorgan.</p> <p>24 So Archie sent an e-mail out. I</p> <p>25 guess he was trying to get a question</p>

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2 answered. I forget who he said he contacted
3 but he tried to get several people who didn't
4 respond who might have better information than
5 I had.

6 But I read the question as did we
7 take any of that -- did we buy any of the
8 inventory from JPMorgan's tri-party repo and
9 we did not. The only inventory that I knew
10 that we bought from a repo was the Fed repo.

11 Q. The \$5 billion security you just
12 referred to, was that the Racers --

13 A. Yeah. Ultimately later we found
14 out it was the Racers, yes.

15 Q. And your testimony is that
16 \$5 billion security was part of the 15 billion
17 tri-party repo.

18 A. It was.

19 Q. And because you did not choose to
20 roll that repo you ended up not buying the
21 securities that were securing that repo; is
22 that correct?

23 MR. STERN: Objection to the form.

24 Can you re-read the question,
25 please?

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 bearing production number
3 BCI-EX-(S)-00035155, marked for
4 identification as of this date.)

5 BY MR. TAMBE:

6 Q. Sir, I've placed before you a
7 document marked Exhibit 294A. Take a moment
8 the look at it. Let me know when you're done.

9 (Document review.)

10 A. Okay.

11 Q. At the bottom of the first page,
12 the Exhibit 294A, you see an e-mail there from
13 Mike Mazzei to you.

14 Do you see that?

15 A. Correct.

16 Q. Who was the Mike Mazzei?

17 A. He was co-head of the commercial
18 real estate -- the US commercial real estate
19 business.

20 Q. And you'll see there's an e-mail
21 dated September 8th?

22 A. Correct.

23 Q. There's a reference in his e-mail
24 to you about Lehman and 10:00 a.m. tomorrow
25 morning.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 (Record read.)

3 A. That repo wasn't secured by
4 securities, first of all. That security was
5 not secured by securities, right?

6 Q. I'm trying to understand the
7 connection between the \$5 billion Racers and
8 the tri-party repo.

9 A. It was in the tri-party repo. So
10 they posted collateral to us that was
11 ineligible collateral, okay?

12 Q. Was any of the other collateral
13 that was posted with respect to the
14 \$15.8 billion tri-party repo purchased by
15 Barclays?

16 A. Not to my knowledge, but I have no
17 idea.

18 MR. STERN: At some point can we
19 take a short break when you're ready?

20 MR. TAMBE: That's fine. We can
21 break now.

22 MR. STERN: All right. A short
23 break.

24 (Recess taken.)

25 (Deposition Exhibit 294A, document

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Do you see that?

3 A. Yes.

4 Q. Do you recall having meetings
5 about Lehman or with Lehman during the week of
6 September 8th?

7 A. No, during the week of September
8 8th I was actually in London the first part of
9 that week. I don't remember exactly if I went
10 Monday or if I went Monday night. But I
11 believe this meeting was about Archstone.
12 Lehman, Barclays, and BofA were the
13 co-financiers of Archstone.

14 Q. And what is or was Archstone?

15 A. Archstone was the -- was a REIT,
16 residential real estate REIT, that was
17 purchased by Tishman and Lehman and financed
18 on a bridge loan at this point in time by
19 Barclays, BofA, and Lehman.

20 (Deposition Exhibit 295A, document

21 bearing production number

22 BCI-EX-(S)-00035143, marked for
23 identification as of this date.)

24 BY MR. TAMBE:

25 Q. Sir, I've placed before you a

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **one-page document marked Exhibit 295A. Take a**
3 **moment to look at that and let me know when**
4 **you're done.**
5 **(Document review.)**
6 A. Okay.
7 Q. This is an exchange of it would
8 seem to me between yourself and Mike Mazzei
9 and the subject lines reads ASN/Lehman.
10 Do you see that?
11 A. Yes.
12 Q. And is ASN a reference to
13 Archstone?
14 A. Yeah. Archstone Smith is the full
15 name of the --
16 Q. And what does the N stand for?
17 A. I don't know. You got me.
18 Q. How big of a transaction -- how
19 large of a transaction was Archstone Smith?
20 A. It was big. \$16 billion I think.
21 Q. What happened to that transaction?
22 A. The first mortgages on the
23 properties were sold to Fannie Mae and Freddie
24 Mac. Eight and a half billion dollars in
25 financing. And there's permanent mortgages on

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 Mike. Where's BofA at this point in time.
3 Are they still willing to provide amounts.
4 **(Deposition Exhibit 296A, document**
5 **bearing production number**
6 **BCI-EX-(S)-00035440, marked for**
7 **identification as of this date.)**
8 BY MR. TAMBE:
9 Q. Sir, I've handed you a one-page
10 document marked Exhibit 296A. Take a moment
11 to review that and let me know when you're
12 done.
13 **(Document review.)**
14 A. Okay.
15 Q. This is an e-mail exchange between
16 yourself and Rick Van --
17 A. Van Zijl.
18 Q. Van Zijl?
19 A. Yes.
20 Q. Who is Rick Van Zijl?
21 A. Rick Van Zijl ran the leveraged
22 finance business for Barclays Capital in the
23 US. He was co-head.
24 Q. And you recognize this as an
25 e-mail in connection with the work you did

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 it now. And the balance of the financing was
3 provided by 500 million of equity provided by
4 Tishman and Lehman Brothers. Bridge equity of
5 another 3 and a half billion I believe
6 provided by Lehman Brothers, BofA, and
7 Barclays. And another 4 to 5 billion in debt
8 financing provided by Lehman, Barclays and
9 BofA.
10 The debt financing and the bridge
11 loans are -- remain on our balance sheets with
12 respect to banks I believe. And in the estate
13 of Lehman Brothers. Lehman's estate, whatever
14 you want to call it, owns 50 percent of the
15 debt, 50 percent of the bridge loan. And BofA
16 and Barclays own 25 percent each.
17 What this meeting was about, by
18 the way, just to put it in context for you,
19 Tishman was trying to take Lehman's financial
20 conditions and were trying to get some
21 amendments to the financing that were
22 favorable to the equity. And BofA kind of
23 wanted to play ball. Lehman wanted to take
24 the hard line and say, you know, screw that,
25 right? And that's what my question was to

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **that weekend, the weekend of the 13th and**
3 **14th.**
4 A. Yeah. His guys were actually
5 looking at the valuation of the leverage loans
6 that were on Lehman's books.
7 Q. In your e-mail to Rick at the top
8 of the page you state that "Our strategy is
9 going to be that we will leave behind all
10 commercial RE, and all the private equity
11 investments other than the investments in the
12 Lehman fund investments."
13 Do you see that?
14 A. Yep.
15 Q. Was it the case that at that point
16 on Saturday, the 13th of September, the
17 decision had already been made not to purchase
18 the commercial real estate and private equity
19 investment assets?
20 A. Yeah. Well, we were told by our
21 board that the only way that we could proceed
22 with the bid was under the condition that we
23 wouldn't take any of the commercial real
24 estate.
25 And with respect to the private

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 equity investments Lehman just had a
3 phenomenal -- you know, for a broker/dealer,
4 phenomenal amount of this stuff on their
5 balance sheet. And we had no -- you know,
6 their capital -- we're on a different capital
7 regime than they are. So for us private
8 equity investments and capital reduction, I
9 don't know how -- I don't know where they
10 housed them or how they got around it on their
11 end.

12 But, you know, we couldn't -- we
13 couldn't have -- we didn't have the capital to
14 take these into our balance sheet so we
15 couldn't take them. It didn't matter what the
16 values were.

17 And the same with the loans.
18 That's what Rick is inquiring -- he's asking
19 about the loans and basically it was the same
20 thing. We just made the decision we didn't
21 want to take the loans because they were
22 capital consumptive as well.

23 Q. And the loans that you're
24 referring to are --

25 A. The leverage loans.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 Q. Okay.

3 (Deposition Exhibit 297A, document
4 bearing production numbers
5 BCI-EX-(S)-00035441 through
6 BCI-EX-(S)-00035442, marked for
7 identification as of this date.)

8 BY MR. TAMBE:

9 Q. Sir, I've handed you a two-page
10 document marked 297A. Take a moment to review
11 that document and let me know when you're
12 done.

13 (Document review.)

14 A. Okay.

15 Q. Do you see Exhibit 297A is an
16 e-mail exchange starting with the bottom
17 e-mail on page 1 that goes over on to page 2.
18 It's from someone called Jason Moynihan.

19 Do you see that?

20 A. Yep.

21 Q. Who is Jason Moynihan?

22 A. Jason was our loan trader who
23 worked for Rich Van Zijl.

24 Q. And there appears in this e-mail
25 from Jason to be some sort of analysis of

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Lehman's leveraged loan portfolio, correct?

3 A. Correct.

4 Q. If Barclays was not going to be
5 purchasing the leveraged loan portfolio, for
6 what purpose was this analysis being done?

7 A. We didn't conclude that we weren't
8 buying the loans right away. And we didn't
9 know what the Fed would let us do and wouldn't
10 let us do. So we looked at everything. We
11 looked at the private equity investments. We
12 looked at the real estate, even though we were
13 told we couldn't take it by our board because
14 we didn't know the context of any deal that
15 might be out there what it would take at the
16 time.

17 (Deposition Exhibit 298A, document
18 bearing production number
19 BCI-EX-(S)-00035491 with attachment,
20 marked for identification as of this
21 date.)

22 (Document review.)

23 A. Okay.

24 Q. Is Exhibit 298A an analysis that
25 was done off Lehman's private equity

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 positions?

3 A. Of a portion of the private equity
4 positions, yes.

5 Q. And by looking at this document,
6 can you tell what portion of the private
7 equity positions were being valued here?

8 A. I would need everything to know.
9 I would need everything to know. I don't -- I
10 don't really know.

11 Q. How do you know it's just a
12 portion of Lehman's private equity positions?

13 A. Because they had a bunch of other
14 investments in other businesses outside of
15 this. They had a number of things they call
16 private equity which weren't private equity.
17 They were failed deals that they cut. Failed
18 syndications, failed -- you make a loan,
19 you're supposed to sell it. You take down the
20 bond, you're supposed to sell it. They didn't
21 sell it. Mispriced. Or misgauged the
22 appetite in the marketplace for it.

23 In order to get their balance
24 sheet down what they did is they took it, cut
25 it into an A note and a B note, sold off the A

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 note, took the B note and put it on the books,
3 typically put it on close to par and didn't
4 mark it. And called it private equity. It
5 wasn't.
6 Q. The subject line of the cover
7 e-mail refers to something called Hercules
8 Templates For Principal Investments.
9 Do you see that?
10 A. Yeah. I didn't pay much attention
11 to that. I don't know what that means.
12 Q. Is there a particular model or a
13 spreadsheet within Barclays that's referred to
14 as the Hercules template?
15 A. I don't know. I didn't pay
16 attention to the title.
17 Q. The form of the spreadsheet, is
18 that a form of spreadsheet that was used by
19 your group in valuing the Lehman positions?
20 A. I would imagine it was. At least
21 the first page.
22 Q. At the top of the left-hand corner
23 of the first page of the spreadsheet, so it's
24 the second page of the exhibit, it says at the
25 top there Project Hercules, top left.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 the two right-hand side columns. One titled
3 BarCap Valuation and the other titled ADJ
4 Value.
5 Do you see those?
6 A. Adjusted value, yeah.
7 Q. And at least on that third page of
8 the exhibit in the BarCap valuation there's 10
9 percent number that appears down the entire
10 column.
11 A. Yep.
12 Q. Is this page of the spreadsheet an
13 example of the type of category-wide
14 adjustment that was proposed by Barclays that
15 you testified about before?
16 A. Yeah, I don't think so.
17 Q. What is this?
18 A. Again, this is private equity
19 investments which we didn't take and we didn't
20 come anywhere near close to completing our
21 analysis over the weekend of the private
22 equity investments. And we started looking at
23 them and a guy named Brent Humphries was
24 responsible for it. He had a team of people
25 working for him. But every one of these on

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 A. Yeah.
3 Q. Was that the reference to the
4 Lehman transaction?
5 A. I didn't know it by that name but
6 it may have been that name. I didn't focus on
7 that.
8 Q. Was there any project name that
9 you knew the Lehman transaction by?
10 A. No, because I didn't get involved
11 until that weekend. That Friday night. I
12 mean, it was already in the press that Lehman
13 wasn't going to make it through the weekend.
14 And the likely bidders were BofA and Barclays.
15 Q. Did you know if the Lehman
16 transaction was Project Long Island at any
17 point?
18 A. It might have been. I have no
19 idea. I said I'm not concerned with project
20 names.
21 Q. If you turn to the third page of
22 the exhibit, the second page of the
23 spreadsheet.
24 A. (Witness complies.)
25 Q. And just drawing your attention to

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 this page is a company. Some that you
3 recognize like TXU. A big company. Everybody
4 knows who TXU is. Some of these like SkyPower
5 I haven't the slightest idea who they are.
6 And so in order to value these
7 things you had to go through and do a
8 fundamental analysis of the company to find
9 out what these may or may not be worth. I
10 really don't know what the 10 percent stood
11 for at the time because 10 percent for each of
12 these names doesn't make a whole lot of sense,
13 right?
14 Like, for instance, TXU, you know,
15 when we looked at it in detail, you see 316
16 million of notional. Lehman wrote that up to
17 411. All right? The bonds that were senior
18 to this were trading at a discount in the
19 market at that point in time. Like 70. So
20 how do you write something up that's private
21 equity and the bonds are junior?
22 So a 10 percent haircut for this
23 would not have been sufficient so the first
24 thing you had to do on that was wipe out that
25 markup. Bawag says plug. That's what it was.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 It was a plug journal history. Debit cash --
3 or sorry. Debit investment in Bawag. Credit
4 income. I had a conversation with Jerry
5 Reilly, the controller. "Jerry, what's the
6 support for this entry?"

7 And I was told it came down from
8 upstairs. So, you know, no further
9 explanation. He wasn't able to provide any
10 further explanation.

11 So what this did tell us is that
12 when I told -- when I said earlier that Lehman
13 was very aggressive with their marks, you
14 know, this put us on notice that we had to be
15 careful.

16 Q. And with respect to this asset
17 class, the private equity asset class, you
18 just left that off the table entirely.

19 A. We left it off the table entirely.
20 Well -- yeah, we left it off the table. Yeah,
21 we left it off the table entirely. Initially
22 on the Saturday/Sunday deal it was -- we were
23 leaving behind this. We were leaving behind
24 the commercial paper -- sorry, the commercial
25 real estate. And that was going to have to be

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 financed by the Fed and -- you know, if any
3 deal was going to go ahead from our point of
4 view. And the Fed was trying to put together
5 a syndicate of banks to finance this stuff.

6 Q. And that effort never got off the
7 ground; is that right?

8 A. Well, it didn't got -- I don't
9 know if it got off the ground. I think it did
10 get off the ground actually but it didn't come
11 to pass so...

12 Q. What do you mean by it didn't come
13 to pass?

14 A. Well, in the end, the deal didn't
15 happen.

16 (Deposition Exhibit 299A, document
17 bearing production numbers
18 BCI-EX-(S)-00035619 through
19 BCI-EX-(S)-00035620, marked for
20 identification as of this date.)

21 BY MR. TAMBE:

22 Q. Sir, I've handed you a two-page
23 document marked Exhibit 299A. Take a minute
24 to review it and let me know when you're done.
25 (Document review.)

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1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 A. Okay.

3 Q. In this two-page document,
4 Exhibit 299A, it's an exchange of e-mail
5 between yourself, Mike Mazzei, and Haejin
6 Baek.

7 Do you see that?

8 A. Yes.

9 Q. And there's references to KeepCo
10 in some of these e-mails. What's that a
11 reference to?

12 A. Yeah. That's Mike's term for the
13 assets we're leaving behind.

14 Q. So -- and this is over the weekend
15 of the 13th and 14th, correct?

16 A. Yes.

17 Q. And so is what you are
18 contemplating or discussing a good bank/bad
19 bank setup?

20 A. In effect, yeah. The stuff that
21 we would not -- that Barclays, if we had done
22 this purchase from the government, stuff we
23 would leave behind and not take.

24 Q. If you go all the way to the back
25 of this e-mail chain, so page 2 --

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1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 A. That's the beginning actually.

3 Q. That's the beginning. Right.

4 This is the Mike Mazzei e-mail to
5 you where he states the letter U, HJ and I --

6 A. Should be on the board of the
7 legacy --

8 Q. -- should be on the board of the
9 legacy Lehman as we will be all common.

10 Do you see that?

11 A. Yeah.

12 Q. And what did you understand that
13 to mean?

14 A. So the structure for KeepCo, all
15 right, and financing these assets that came up
16 with was we would contribute value first loss
17 of an amount, 3 billion, okay? The Fed was
18 going to come in then I think -- sorry.
19 Correct me. The preferred was going to be
20 used -- the preferred was going to be used
21 to -- so everything below the preferred debt
22 that Lehman had on their books, preferred
23 down, would be -- stay behind, okay?

24 Then we were the next 3 billion.
25 Barclays money. And the Fed was going to come

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 in I think for 8 up to I think a total of at</p> <p>3 that point like 21 billion, round numbers. 20</p> <p>4 billion, 21 billion.</p> <p>5 And then the Fed was trying to get</p> <p>6 ten firms to put in an equal amount including</p> <p>7 us and senior financing for these assets to</p> <p>8 come up to the total of \$64 billion which was</p> <p>9 the total of the book value of the assets,</p> <p>10 Lehman's book value of the assets we said we</p> <p>11 were leaving behind.</p> <p>12 And that -- but when the Fed went</p> <p>13 out and talked to the other firms, they only</p> <p>14 got to a total of 55. So we were 9 short. So</p> <p>15 then I was asked to go back and see, okay, go</p> <p>16 through the private equity investments, is</p> <p>17 there any of the private equity investments</p> <p>18 that we would take to close that gap.</p> <p>19 And all Mike is saying our 3</p> <p>20 billion was actually common so we should be on</p> <p>21 the board, how these things get managed,</p> <p>22 because we're at risk.</p> <p>23 Q. The 3 billion that Barclays --</p> <p>24 under this proposal the 3 billion that</p> <p>25 Barclays was putting in, is that the price</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 that Barclays was paying to purchase the</p> <p>3 assets that it did want to purchase out of</p> <p>4 Lehman?</p> <p>5 A. No. Over the weekend there was --</p> <p>6 no, it wasn't what we were purchasing, but if</p> <p>7 you were purchasing the entire company, right,</p> <p>8 the accounting you get is different than when</p> <p>9 you're buying assets.</p> <p>10 So Lehman had so much book value</p> <p>11 and if you weren't, you know, using it all up</p> <p>12 in markdowns and write-downs and losses but we</p> <p>13 weren't paying book value, theoretically there</p> <p>14 was a gain there, right? And you attribute</p> <p>15 that gain which this 3 billion was to -- as --</p> <p>16 you know, to this deal. And that's what that</p> <p>17 was referring to.</p> <p>18 Q. So the \$3 billion was -- I mean,</p> <p>19 if I understand your answer, the accounting</p> <p>20 gain from the sale of the assets that Barclays</p> <p>21 would purchase, that would be contributed to</p> <p>22 the legacy KeepCo.</p> <p>23 A. When you were buying the stock of</p> <p>24 Lehman, the entire stock, and you took the</p> <p>25 assets and marked them to fair value and the</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 liabilities and marked them to fair value, how</p> <p>3 much equity was left over in that number. And</p> <p>4 then how much were you actually going to pay</p> <p>5 for that equity which wasn't a big number. I</p> <p>6 don't know what it was. It was a dollar</p> <p>7 probably.</p> <p>8 So to the extent if we were paying</p> <p>9 the government a dollar and when you valued</p> <p>10 the left side and the right sided there was</p> <p>11 still something left, that would be an</p> <p>12 accounting gain that we were going to book as</p> <p>13 goodwill.</p> <p>14 So then we could take -- if we had</p> <p>15 a gain, we could take 3 billion of actual</p> <p>16 cash, put into it KeepCo, and it's real cash</p> <p>17 but it -- and it's real loss to us</p> <p>18 theoretically, but it would be offset by the</p> <p>19 gain on the -- it would have been offset by</p> <p>20 the gain on the acquisition of Lehman as a</p> <p>21 whole company.</p> <p>22 (Deposition Exhibit 300A, document</p> <p>23 bearing production number</p> <p>24 BCI-EX-(S)-00036005, marked for</p> <p>25 identification as of this date.)</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. TAMBE:</p> <p>3 Q. Sir I've handed you a one-page</p> <p>4 document marked 300A. Take a moment to review</p> <p>5 it and let me know when you're ready.</p> <p>6 (Document review.)</p> <p>7 A. Okay.</p> <p>8 Q. Now, Exhibit 300A is an e-mail</p> <p>9 from Mike Mazzei to you written late Sunday</p> <p>10 night, early Monday morning, September</p> <p>11 14th/15th, correct?</p> <p>12 A. Um-hum.</p> <p>13 Q. Yes?</p> <p>14 A. Yes. Well, GMT so it's not that</p> <p>15 late. This is Greenwich meantime. It's 8:30</p> <p>16 in the morning writing this.</p> <p>17 Q. Okay. I'm not so sure on the time</p> <p>18 conversion, but it's roughly that time period.</p> <p>19 A. Yeah. It's like 8:30 in the</p> <p>20 morning.</p> <p>21 Sorry. It's not --</p> <p>22 MR. STERN: In other words, five</p> <p>23 hours earlier in New York.</p> <p>24 Q. It's actually earlier. It goes</p> <p>25 the other way. Not adding on five hours.</p>

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Subtracting five hours from GMT, right?

3 A. No, no.

4 Three in the morning. So, yeah.
5 Sorry. Yeah. I don't know why his e-mail is
6 in GMT. I have no idea. But, yeah, he's --
7 yeah, that would have added five hours. So
8 it's 10:00 -- you're right. It's 10:00 on
9 Sunday night. 10:30 on Sunday night.

10 Q. In his e-mail he makes reference
11 to I guess Lehman people walking out of the
12 Lehman building. It's being carried on the TV
13 coverage.

14 Do you see that?

15 A. Yeah.

16 Q. At this point, late Sunday night,
17 early Monday morning, the transaction that you
18 were contemplating and working on on the 13th
19 and 14th, that transaction was not going to go
20 forward, correct?

21 A. That's correct.

22 Q. Was there ever a contemplation
23 that you would hire the former Lehman
24 employees without buying any of the assets of
25 Lehman?

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 now and Lehman is the payor on these things
3 and, you know, they can't possibly be worth
4 what you paid for them which is what they're
5 marked at.

6 And in the context of that
7 discussion we got onto the auction rate
8 securities and the auction rate securities I
9 suggested that we didn't want to take them
10 because of all the noise around auction rate
11 securities and the whole remarketing and how
12 we would do that if we were to take them, et
13 cetera.

14 And he said to me something to the
15 effect, Well, I didn't realize that you
16 couldn't take them, that we could leave stuff
17 behind. I said, Yeah, this is going to be an
18 asset purchase. It's not going to be the
19 purchase of a company. So we can leave
20 whatever we want behind.

21 And he suggested then you should
22 leave it all behind. You shouldn't take
23 anything. And I was kind of curious. He
24 said, Do you realize what's going on out
25 there, and then actually that Monday morning I

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1 M. KEEGAN - HIGHLY CONFIDENTIAL

2 A. I did suggest that actually. So
3 on Monday -- it wasn't over the weekend that
4 we did that, right? So over the weekend, no,
5 the answer to your question. But on Monday,
6 right, when I was going through the assets
7 that were in Lehman's broker/dealer and what
8 other entities we might be buying or assets we
9 might be buying, one of the people I talked to
10 was Eric Felder. I was specifically talking
11 to him about -- one of the things was that I
12 recall talking to him about was auction rate
13 securities and there was a bunch of Lehman
14 commercial paper and notes that were in his
15 inventory as well which I talked to him about
16 which obviously weren't -- you know, weren't
17 marked correctly at that point in time after
18 the bankruptcy.

19 There were some credit link notes
20 that Lehman was the payor on that they
21 obviously wouldn't be able to pay going
22 forward. So those were the kind of topics I
23 was talking to him about. And, you know, how
24 should we look at the value of these things,
25 right? Because it's like Lehman is bankrupt

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 didn't because we went over it -- you know,
3 Sunday night the transaction and, you know, we
4 ended it pretty depressed. Monday I came
5 in -- what I was really focused on Monday was
6 what's our exposure to Lehman. You know, what
7 swaps are going away. You know, that's what I
8 was focused open. I wasn't focused on what
9 was happening in the market.

10 So he said, "Do you realize what's
11 happening in the market?"

12 And I said, "No, I've been locked
13 up in your office all day. I don't have
14 access to anything. I have no idea what's
15 going on."

16 He said, "The whole world is
17 melting down out there."

18 He said, "So you guys are nuts if
19 you take anything. If you could leave it all
20 behind you should leave it all behind."

21 And actually when you sat back and
22 thought about it that seemed like a brilliant
23 idea.

24 So our first proposal to our
25 management when they said, Okay, you know,

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 what are you guys comfortable buying, was --</p> <p>3 we said nothing. Just leave it all here.</p> <p>4 Just take the people.</p> <p>5 And that didn't happen though,</p> <p>6 obviously. We were told to go back and try</p> <p>7 again. Actually, we were instructed to take</p> <p>8 everything that we could take because the</p> <p>9 concern over whether -- you know, what you'd</p> <p>10 be leaving Lehman with without people to</p> <p>11 manage the inventory and leaving all of that</p> <p>12 inventory on their balance sheet in markets</p> <p>13 that were, you know, falling apart.</p> <p>14 Q. Was there also discussion that</p> <p>15 some of Lehman's inventory was worth</p> <p>16 purchasing at the right price?</p> <p>17 A. I don't recall if there was or</p> <p>18 not. I mean, that wasn't the instruction.</p> <p>19 The instruction was in effect if you want the</p> <p>20 deal to go through you got to try to take</p> <p>21 everything you can because if you leave too</p> <p>22 much behind and you leave -- and you leave --</p> <p>23 and no people to manage it, that will never</p> <p>24 get approved.</p> <p>25 Q. And who did you have that</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 discussion with about whether all should be</p> <p>3 left behind or none should be left behind?</p> <p>4 MR. STERN: Let me just pause here</p> <p>5 because I think we're blurring over into</p> <p>6 privileged conversations but I think you</p> <p>7 can answer. You can answer that</p> <p>8 question and then we'll take it a</p> <p>9 question at a time.</p> <p>10 A. It was our bankruptcy counsel</p> <p>11 basically.</p> <p>12 Q. Your in-house bankruptcy counsel?</p> <p>13 A. No, no. Our outside advisors plus</p> <p>14 Archie Cox.</p> <p>15 Q. Who was your external bankruptcy</p> <p>16 counsel at that time?</p> <p>17 MR. STERN: You can answer that if</p> <p>18 you remember.</p> <p>19 A. I think it's Cleary but I could be</p> <p>20 wrong.</p> <p>21 Q. You were in discussions with</p> <p>22 Cleary?</p> <p>23 A. They were in the room when I --</p> <p>24 when we came in and suggested that we take</p> <p>25 nothing.</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Who else was in the room when you</p> <p>3 came in and suggested --</p> <p>4 A. Archie Cox.</p> <p>5 Q. And who else from Barclays?</p> <p>6 A. That was it.</p> <p>7 Q. So it was you, Archie Cox, and</p> <p>8 someone from Cleary?</p> <p>9 A. Two people from Cleary, yeah.</p> <p>10 Q. Do you remember who the people</p> <p>11 were from Cleary?</p> <p>12 A. Well, actually, Michael Klein</p> <p>13 might have been in the room. I can't say for</p> <p>14 certain, but he might have been in the room.</p> <p>15 I can't say -- no, I can't say for certain.</p> <p>16 You know, I don't know. It was a woman and a</p> <p>17 guy.</p> <p>18 Q. Lindsay Grandfield?</p> <p>19 A. I don't remember the name.</p> <p>20 Q. And do you recall when that</p> <p>21 meeting was?</p> <p>22 A. It was about 6:30, 7:00 on Monday</p> <p>23 night.</p> <p>24 (Deposition Exhibit 301A, document</p> <p>25 bearing production numbers</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 BCI-EX-(S)-00082251, marked for</p> <p>3 identification as of this date.)</p> <p>4 BY MR. TAMBE:</p> <p>5 Q. Sir, I've handed you a one-page</p> <p>6 document marked 301A. Take a moment to look</p> <p>7 at it and let me know when you're done.</p> <p>8 (Document review.)</p> <p>9 A. Okay.</p> <p>10 Q. When you'll see this is an</p> <p>11 exchange of e-mails between Rich Ricci, Robert</p> <p>12 LeBlanc, and Patrick Clackson.</p> <p>13 Do you see that?</p> <p>14 A. Yep.</p> <p>15 Q. Who is Robert LeBlanc?</p> <p>16 A. Rob LeBlanc is head of group risk</p> <p>17 at Barclays PLC.</p> <p>18 Q. And you see there's a reference in</p> <p>19 the first e-mail at the bottom of the chain to</p> <p>20 the assets that would be included.</p> <p>21 Do you see that?</p> <p>22 A. Yeah. "Please could you let me</p> <p>23 know who I can speak to later today to broadly</p> <p>24 understand the assets that would be included.</p> <p>25 Thanks."</p>

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Q. And then at the top of the
3 document, Rich Ricci's e-mail states, "Looks
4 like roughly \$50 billion."

5 Do you see that?

6 A. Yep.

7 Q. Was it your understanding that the
8 assets that would be included in the purchase
9 as of Monday, September 15th, were roughly
10 \$50 billion?

11 A. We were paying -- I don't know how
12 he knows that necessarily, right? We were
13 paying 45 billion for assets that were under
14 repo at the Fed, right? So, you know, repo
15 lending basically is secured lending. And a
16 percentage of the value of the assets is
17 typically advanced, not a hundred cents on the
18 dollar but a percentage.

19 That difference between the
20 advance amount and the asset market value --
21 or mark is probably a better term -- is the
22 haircut or cushion that the financier requires
23 in order to protect themselves in the event
24 they need to liquidate the inventory.

25 MR. STERN: Can you reread the

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2 question, please, Francis.

3 (Record read.)

4 A. I didn't know what they were. So
5 that's a better answer. I didn't know what
6 they were necessarily.

7 Q. Did you understand the reference
8 in Rich Ricci's e-mail of 50 billion to be the
9 value of the assets to be included in the
10 purchase?

11 A. No. What I was actually trying to
12 explain to you was if we were paying 40 -- I
13 don't know what they were exactly, but if we
14 were paying 45 billion to take the Fed out of
15 its repo, plus some haircut on top of that to
16 get to 50 billion, I'm not surprised. But I
17 don't know for a fact one way or the other
18 what they were. That's the information we
19 were trying to get from Lehman and couldn't
20 get.

21 (Deposition Exhibit 302A, document
22 bearing production number
23 BCI-EX-00054270 with attached
24 spreadsheet, marked for identification
25 as of this date.)

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2 A. I just noticed that this is
3 actually a Monday e-mail. So it's 4:03
4 Monday.

5 Q. Yeah.

6 A. So this was the first deal, right?
7 And everything I said to you was -- on the
8 repo had to do with Thursday's deal, not
9 Monday's deal. So that was an error on my
10 part giving you that answer. I thought this
11 was Thursday's deal. Okay? So --

12 MR. STERN: The "this" you're
13 referring to is Exhibit 301A?

14 THE WITNESS: Yes. 301A.

15 Q. So let's go back to now you're
16 focused on the fact that it's Monday's deal.
17 What's the 50 billion that Rich Ricci is
18 talking about?

19 A. I don't know. At that point in
20 time I don't know. Because at that point in
21 time we were still going through -- I mean, we
22 were still going through the assets, and I
23 probably didn't have my conversation with
24 Felder until about 3:00 on Monday. And as I
25 said earlier, Lehman -- one thing they weren't

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2 prepared for certainly was bankruptcy. So
3 that whole exercise on Monday getting us
4 information, they had a very difficult time.
5 So I have no idea where he got his information
6 of 50 billion from. But he did know the
7 process we were going to go through at that
8 point in time which was we were going to go
9 through and sift through the inventory and
10 take what we wanted. It was going to be an
11 asset purchase and so we would take what we
12 wanted and not take what we didn't want.

13 Q. And in his e-mail, Rich Ricci's
14 e-mail at the top of Exhibit 301, he makes a
15 reference to you and Mahon.

16 Do you see that?

17 A. Yes.

18 Q. And he makes a reference to "all
19 good and clean."

20 Do you see that?

21 A. Yes.

22 Q. That's a reference that you'd been
23 separating out excluded assets from the assets
24 that you wished to have included; is that
25 right?

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. You got to ask Rich.</p> <p>3 Q. Well, you were looking to identify</p> <p>4 the good and clean assets, right?</p> <p>5 A. We were looking to identify assets</p> <p>6 that we'd be comfortable purchasing, yes.</p> <p>7 Q. And those would be the good and</p> <p>8 the clean ones.</p> <p>9 MR. STERN: Objection to the form.</p> <p>10 A. You got to ask Rich.</p> <p>11 Q. Well, were you identifying assets</p> <p>12 that were, you know, of questionable value?</p> <p>13 A. My assumption was we were going to</p> <p>14 take all the assets initially, okay, and that</p> <p>15 we were supposed to come up with a value that</p> <p>16 we would take them at, that we felt</p> <p>17 comfortable taking them at, right?</p> <p>18 And we knew from the weekend that</p> <p>19 Lehman's assets weren't -- you know, weren't</p> <p>20 marked tightly, that they were marked very</p> <p>21 much on the aggressive side, which isn't</p> <p>22 surprising since they were struggling</p> <p>23 financially and potentially going out of</p> <p>24 business, that they marked things, you know,</p> <p>25 less than conservatively, right?</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 So we knew that going in that we</p> <p>3 had to -- we had to get a good mark on them,</p> <p>4 or a good reasonable mark on them.</p> <p>5 Now, the time frame in which</p> <p>6 you're doing this in everything is done kind</p> <p>7 of, you know, rough numbers. It's not -- you</p> <p>8 know, we didn't have time to take every CUSIP</p> <p>9 and validate a price for each security. In</p> <p>10 fact, none of that was done on Monday. I</p> <p>11 mean, we took the information that we had</p> <p>12 developed over the weekend which, you know, on</p> <p>13 certain inventory that's what we did, we</p> <p>14 took -- we did the CUSIP pretty much and came</p> <p>15 up with what we thought the value was and how</p> <p>16 much we thought we were off.</p> <p>17 We took that information and kind</p> <p>18 of overlaid it on what we were actually being</p> <p>19 asked to take on Monday.</p> <p>20 Q. Did you ever give Rich Ricci a</p> <p>21 list of good and clean assets on Monday, the</p> <p>22 15th of September?</p> <p>23 A. Certainly not by 4:03 p.m., no.</p> <p>24 Q. At some point on Monday?</p> <p>25 A. Not a list that we called good and</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 clean. We gave him a list of things we</p> <p>3 thought they could buy and at a suggested</p> <p>4 price.</p> <p>5 MR. TAMBE: Let's just take a</p> <p>6 short break.</p> <p>7 (Recess taken.)</p> <p>8 BY MR. TAMBE:</p> <p>9 Q. So, sir, I've placed before you a</p> <p>10 document marked Exhibit 302A which is a cover</p> <p>11 e-mail with a large set of spreadsheets behind</p> <p>12 it. I'm not going to quiz you in detail about</p> <p>13 the spreadsheets but if you could review the</p> <p>14 cover e-mail and flip through the spreadsheets</p> <p>15 and I'll ask you some questions.</p> <p>16 (Document review.)</p> <p>17 A. Okay.</p> <p>18 Q. Looking at the cover e-mail and</p> <p>19 the attached schedules, is this part of the</p> <p>20 effort relating to the transaction we talked</p> <p>21 about, the Monday transaction, as opposed to</p> <p>22 the Thursday transaction?</p> <p>23 A. Looks like it, yeah.</p> <p>24 Q. And it's an e-mail -- the cover</p> <p>25 e-mail is an e-mail from Stephen King to</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Archie Cox and you're shown as a c.c.</p> <p>3 Do you see that?</p> <p>4 A. Yep.</p> <p>5 Q. And what role did Archie Cox play</p> <p>6 in this transaction?</p> <p>7 A. I don't really know actually. He</p> <p>8 was a senior guy. I mean, he was chairman of</p> <p>9 the US. So -- but did he have a line</p> <p>10 responsibility in this transaction, you know,</p> <p>11 I'm not so sure. I mean, he --</p> <p>12 Q. When you think of the group of</p> <p>13 Barclays business people who were leading the</p> <p>14 Lehman/Barclays transaction in its various</p> <p>15 forms who are the people that come to your</p> <p>16 mind?</p> <p>17 A. Rich Ricci. John Hughes in legal.</p> <p>18 I guess myself with respect to the inventory.</p> <p>19 Stephen King. Jerry. And Bob Diamond and</p> <p>20 Archie. I mean, Archie -- and also Michael</p> <p>21 Klein.</p> <p>22 Q. And of this grouping of people,</p> <p>23 the folks who were actually negotiating the</p> <p>24 terms of the transaction, would it be a subset</p> <p>25 of this group?</p>

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A. Yeah. I would say the terms of the transaction were negotiated by, you know, Rich and Jonathan Hughes. And our counsel.

Q. And what role did Michael Klein play in all this?

A. He was an advisor to Barclays over the weekend principally.

Q. At any time during the September 12th on period, did you have any conversations with Michael Klein about the assets to be purchased?

A. From what time period are you talking about?

Q. Starting on the 12th of September onwards.

A. Yeah. Periodically I had conversations. You'd have to be more specific with your question what you're asking me.

Q. Do you recall specifically conversations that you had with Mr. Klein about the assets that Barclays was going to purchase from Lehman?

A. The only conversation -- specific conversation that -- substantive conversation

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that I know -- that I know I had with him was with respect to -- it was on the Friday morning with respect to -- Friday morning, the 19th -- with respect to the -- I don't know what you want to call them. They were called unpledged assets, which was the list of assets that were sitting in Lehman's -- purportedly sitting in Lehman's box that were not pledged against financing principally because they were, you know, some sort of unique security or private security that may be in some cases physical securities that weren't easy to put into repo. That weren't easy to finance.

Q. And what was your discussion with Mr. Klein about those unpledged securities?

A. This is on Friday morning and it was again we were asked -- Lehman was trying to come up with additional value to close the gap on the liabilities and to -- and also on the -- to a certain extent on the excluded inventory that we had been delivered that we felt was marked incorrectly.

And one -- there was several items that were proposed as potentially having value

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for Barclays to close that gap and one of them was this list. And I was asked to look through the list to see if we thought the securities were worth what they were putting on the piece of paper to be worth. And actually could do very little with respect to the list because it wasn't a book quite this thick (indicating) but it was thick. Most of it was a lot of zero valued securities which was principally the residuals and junior pieces of their -- of Lehman's asset backed securitization deals they had done through the years that they had held onto or didn't sell.

The bulk of the value -- and I forget what the value of this list was -- but the bulk of the value was made up by a handful of municipal securities which we were able to get some comfort on the pricing that was reasonable based on going to Bloomberg.

There was another security, Navigator, which was a restructured private equity security that I talked to a guy named Bob Mallard about. He ran -- he was the person at Lehman that ran -- I had no idea

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what Navigator was. I knew it was a hundred -- if I remember correctly it was 144 million, so it was a reasonable amount of what the value in this account was. And, you know, is it worth 144 million, I have no idea. So they put me in touch with Bob Mallard and I talked to him about it. And he explained to me what Navigator was. It didn't give me a whole lot of comfort on the value but at least I knew what it was. It was a real operating company.

Q. What's your understanding of the value of the unpledged assets?

A. You know, off the top of my head I honestly don't remember.

Q. There's \$1.9 million that's referenced in some of the e-mails. Does that refresh your recollection?

A. Could be. I don't remember.

Q. You said there were several items proposed to plug the gap. The unpledged assets was one of those items. What other items were proposed?

A. There was an FX clearing account

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2 which it was purportedly up to a billion
3 dollars of good faith deposits in which turned
4 out not to be real. It may have been real at
5 one point in time but C Corp was the
6 settlement agent for Lehman for FX. And I
7 know Gerard LaRocco called Citicorp to find
8 out what they thought about the value of that
9 account. They kind of laughed at him. They
10 said, Of course that's gone. They closed out
11 all their accounts and used up -- closing out
12 their contracts.
13 There was some exchange traded
14 futures that I had nothing to do with and
15 don't understand.
16 There was a couple other dead-ends
17 which I don't remember what they are off the
18 top of my head.
19 Q. Was one of the items 15(c)(3)
20 cash?
21 A. Might have been. I don't
22 remember.
23 Q. Is that a term you're familiar
24 with?
25 A. Restricted cash? Yeah, sure.

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2 account, that was an item that in your opinion
3 went nowhere. There was no value there; is
4 that right?
5 A. I was actually in Gerard's office
6 when Gerard was on the phone with Citicorp,
7 the clearing agent at Citicorp, and the
8 clearing agent at Citicorp assured him that
9 through the process of liquidating the open FX
10 contracts that Lehman Brothers' various
11 entities had open with Citicorp, that that
12 deposit was fully consumed in that process and
13 that there was no value.
14 Q. Do you know whether there was any
15 value on the exchange traded futures?
16 A. I don't know if there was.
17 Q. And you don't know one way or the
18 other whether there was any additional value
19 or accessible value in the 15(c)(3) accounts?
20 A. Nope.
21 Q. At that time have you heard of any
22 excess margin, excess OCC margin that was
23 transferred from Lehman to Barclays?
24 A. No. I mean, I just wasn't
25 involved with that aspect of it, right? I

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2 Customer cash?
3 Q. Right. Customer cash.
4 A. Yeah.
5 Q. And are you familiar with the
6 notion of customer cash being one of the items
7 that was proposed to plug the gap here?
8 A. Not really. I mean, I don't know
9 how you would plug it with customer cash
10 unless they had deposits -- that Lehman had
11 deposits within the 15 -- their own 15(c)(3)
12 deposits, right? Which that might be their
13 money.
14 Q. The exchange traded futures that
15 you referenced, was that -- were those OCC
16 transactions?
17 A. I believe they were exchange
18 traded futures.
19 Q. On what exchange?
20 A. I wasn't involved. I just know
21 there was a list of five or six items that
22 they proposed. You know, can you get us some
23 additional value to cover the cost for some
24 liability that we were taking on so...
25 Q. And you told us the FX clearing

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 don't know anything about futures and exchange
3 traded contracts and clearing and settlement.
4 It wasn't what I was asked to do.
5 Q. Over the week -- the following
6 weekend, the weekend of the 20th-21st, did you
7 remain involved in aspects of the transaction?
8 A. Well, I went home Friday so I
9 basically worked Thursday night till 4 in the
10 morning. Went to the Four Seasons and slept
11 from 4 to 6. Came back at 6. And then Rich
12 been to bed at -- you know, 6 to -- he was
13 back by 9 I think. And then I worked that
14 morning until probably again 2:30, 3:00. Went
15 home. Checked in on Saturday morning to try
16 to find out what happened at the court
17 hearing. Asked if I was needed and was told I
18 wasn't needed. So I stayed home. And then I
19 ended up having to get on the phone and spent
20 really pretty much most of the weekend on the
21 phone talking to various Lehman employees that
22 we had hoped were coming to join us but were
23 talking to other firms about not coming and so
24 I talked them out of doing that and coming
25 with us instead. So that's that I spent the

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2 weekend doing mostly.

3 Q. With respect to movement of
4 collateral or valuation of collateral did you
5 have any involvement in that?

6 A. I didn't do anything in that.

7 Q. How about the following week, the
8 week of the 22nd, were you involved in any
9 movement of collateral or valuation of
10 collateral that week?

11 A. No. Not really. That was --
12 once -- once the -- you know, we closed on the
13 trade, got possession of what we got
14 possession of, that was -- Stephen was the
15 point person for that. He was the point
16 person for coordinating with all the other
17 desks and putting the proper value on it and,
18 you know, distributing it out to the desks and
19 hedging it, et cetera. That was his job. He
20 kept me informed of what he was doing in the
21 big picture, but I wasn't involved day to day.

22 Q. Do you have any knowledge of a
23 settlement that was entered into between
24 JPMorgan, Barclays, LBI, Lehman Brothers,
25 Inc., the broker/dealer, in December of 2008?

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 obviously there was a dispute about that.

3 Q. And your understanding is that the
4 settlement was to settle up that dispute.

5 A. Yeah.

6 MR. STERN: You marked 302A. Are
7 we going to use that?

8 MR. TAMBE: We used it a little
9 bit. We'll go back and use it some
10 more.

11 MR. STERN: Okay. I just want to
12 note for the record that 302A may be a
13 privileged document at least in part.
14 I'm not sure. I would have to talk to
15 some people about that. But I just want
16 to reserve my position on that.

17 BY MR. TAMBE:

18 Q. So I've put before you, sir, a
19 document marked Exhibit 144A. Take a moment
20 to look at that document and let me know when
21 you're done.

22 (Document review.)

23 A. Okay.

24 Q. And you'll see the bottom of the
25 document there's an e-mail from Marty Malloy

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2 A. I don't know what the terms of the
3 settlement were if you're asking me that.

4 Q. I'm asking you if you were aware
5 of the fact of the settlement.

6 A. Yeah. I believe there was a
7 settlement. I know that after -- so Lehman --
8 so JPMorgan and -- I believe because they had
9 operational problems were unable to deliver
10 securities to us timely on that night. Were
11 unable to deliver everything that was in
12 the -- the we thought was in the repo to us.
13 So they delivered -- and they delivered us
14 securities late. Our clearing agent stayed
15 open as late as they could which was well past
16 what they normally would do. You know, say, 2
17 in the morning. And we hadn't received -- we
18 put 45 billion of value out, but by JPMorgan's
19 measurements they hadn't given us 45 billion
20 yet. And so they posted another 7 billion in
21 cash is what I know. We got 7 billion in
22 cash.

23 And that -- we did have cash. And
24 then we went to move the cash later apparently
25 and JPMorgan said you don't have cash. And

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2 to J. LaRocco and others.

3 Do you see that?

4 A. Um-hum.

5 Q. Yes?

6 A. Yes.

7 Q. And there's a totalling up of
8 values and cash amounts.

9 Do you see that?

10 A. Yeah.

11 Q. There's a line item in that e-mail
12 that says Excess Collateral, 7.19.

13 Do you see that?

14 A. 7.19. Yeah. I see that. Okay.
15 I see it.

16 Q. You don't know what that means?

17 A. No, I don't know what it means off
18 the top of my head.

19 Q. And further up there there's a
20 line that says Repo Cash Settlement 7.00.

21 Do you see that?

22 A. Sorry. I may be looking at the
23 wrong line on your last question because the
24 1.7 was on the same line as the repo cash of 7
25 billion. So is that correct? Is that the 1.7

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 you were referring to?
3 Q. No. I was asking you to look at
4 the line that says Excess Collateral.
5 A. Oh, sorry. Sorry, sorry, sorry,
6 sorry, sorry. Okay. I answered the
7 question -- I did answer the question
8 incorrectly because I was looking at the 1.7
9 trying to figure out what that is.
10 Q. So let's go to the line that says
11 Excess Collateral, 7.19.
12 A. Sorry. I didn't understand your
13 question properly.
14 Q. Do you have any understanding of
15 what that means?
16 A. Yeah. I do have an understanding
17 of what that means. This BoNY -- I think I
18 testified earlier that we were trying to find
19 out how much value we received from the repo
20 from Lehman Brothers, JPMorgan, and they
21 couldn't tell us. Okay? BoNY, because it
22 passed through their clearance systems, has a
23 rough estimate of what they believe that
24 number is to be, okay? And gave -- and that's
25 their -- the total securities in cash received

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 items.
3 Do you see that?
4 A. Yep.
5 Q. And the first numbered item ends
6 with a question. "Can securities be sold by
7 LBI without approval at a discount to current
8 mark?"
9 Do you see that?
10 A. Um-hum.
11 Q. Yes?
12 A. Yeah, I see it.
13 Q. Do you know what that means?
14 A. Not definitively, no.
15 Q. Was it your understanding that LBI
16 was selling securities to Barclays at a
17 discount to the current mark?
18 A. This is Wednesday so this was the
19 Monday night transaction. We did go through
20 and identify haircuts is the term I would use
21 as opposed to discounts. But we applied to
22 the various security line items to account for
23 the fact that we were buying inventory in
24 bulk, to account for the fact that we were not
25 being able to close on the inventory until

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 is the sum of their rough estimates, right?
3 Plus the 7 billion in cash that's posted in
4 the repo plus another small DTC cash item to
5 come to I guess \$52.19 billion of value.
6 And then I assume the 45 billion
7 is a repo cash that -- the cash we sent out to
8 JPMorgan. And so what is referred to as
9 excess collateral is the -- probably a better
10 term. And that is the haircut differential if
11 you believe BoNY's values.
12 Q. Who's Marty Malloy?
13 A. Marty was a prime brokerage
14 employee. A security borrow lending. I'm not
15 sure -- because it was repo I guess he was
16 involved.
17 Q. After his name on that e-mail
18 address Marty Malloy it says CFG MGMT. Does
19 that phrase have any management to you?
20 A. CFG management. Collateral
21 something -- yeah. Collateral from the
22 finance group. I have no idea. I don't know
23 what it means. I don't know definitively.
24 Q. Okay. If you go back to
25 Exhibit 302A there are a series of numbered

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Friday at the earliest, to account for the
3 fact that the markets were melting down, and
4 that we didn't have certainty of the valuation
5 that Lehman -- we knew that Lehman had been
6 aggressive with their valuations and we didn't
7 have, you know, clear certainty with respect
8 to what the value of all the securities were.
9 So there were, you know, haircuts applied to
10 the inventory.
11 Q. Sir, I'm showing you a document
12 that's previously been marked as Exhibit 19.
13 Have you seen this document before today?
14 A. Again, only in prep for this
15 deposition.
16 Q. Okay. Is it fair to say that
17 you -- well, do you understand the information
18 that's contained in this document?
19 MR. STERN: Objection to the form.
20 A. I understand what I've been told I
21 guess.
22 Q. By counsel?
23 A. By counsel, yeah.
24 Q. Okay. And putting aside anything
25 you were told by counsel, do you have any

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 other understanding about this document?</p> <p>3 A. The first time I saw it was in</p> <p>4 preparation for the deposition so the answer</p> <p>5 to that would be no if I put aside what I was</p> <p>6 told.</p> <p>7 Q. Putting aside anything you were</p> <p>8 told by counsel in preparation, did you have</p> <p>9 an understanding back in the week of September</p> <p>10 15th that Lehman was preparing a balance sheet</p> <p>11 that would be used for purposes of the</p> <p>12 transaction?</p> <p>13 MR. STERN: Objection to the form.</p> <p>14 A. Never thought about it.</p> <p>15 Q. All right. Put it aside.</p> <p>16 (Deposition Exhibit 303A, document</p> <p>17 bearing production number</p> <p>18 BCI-EX-00077814, marked for</p> <p>19 identification as of this date.)</p> <p>20 BY MR. TAMBE:</p> <p>21 Q. Sir, I've placed before you a</p> <p>22 document marked Exhibit 303A. Take a moment</p> <p>23 to review it and let me know when you're done.</p> <p>24 (Document review.)</p> <p>25 A. Okay.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And, sir, can you confirm this is</p> <p>3 the e-mail exchange that you had with Mr. Cox</p> <p>4 and others on that Friday, the 19th, about the</p> <p>5 JPM assets that you testified about before?</p> <p>6 A. Yeah. Yeah. This is the e-mail I</p> <p>7 was referring to.</p> <p>8 Q. If you look at the time stamp on</p> <p>9 these e-mails, the ones at the bottom of the</p> <p>10 page seem to be around almost 10:00 at night.</p> <p>11 Do you see that?</p> <p>12 A. Yeah.</p> <p>13 Q. And your understanding was that</p> <p>14 the hearing before the bankruptcy judge was</p> <p>15 under way at that time, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Did anyone who was attending that</p> <p>18 hearing on Friday, the 19th, describe for you</p> <p>19 any statements that were made to the judge off</p> <p>20 the record about the transaction?</p> <p>21 A. Say that again.</p> <p>22 Q. Did anyone who attended that court</p> <p>23 hearing on Friday the 19th describe to you any</p> <p>24 statements that were made to the judge off the</p> <p>25 record?</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't remember -- I don't</p> <p>3 remember if they did or they didn't or why</p> <p>4 they would. I didn't have all that con -- you</p> <p>5 know, that much detailed conversations about,</p> <p>6 you know, what happened. I was interested in</p> <p>7 knowing the next day whether the transaction</p> <p>8 got approved or didn't get approved. But</p> <p>9 beyond that I didn't get into the specifics</p> <p>10 that much that I know of or recall.</p> <p>11 (Pause on the record.)</p> <p>12 (Deposition Exhibit 304A, document</p> <p>13 bearing production number</p> <p>14 BCI-EX-00080560, marked for</p> <p>15 identification as of this date.)</p> <p>16 BY MR. TAMBE:</p> <p>17 Q. Sir, I've placed before you a</p> <p>18 one-page document marked Exhibit 304A. Take a</p> <p>19 moment to look at it and let me know when</p> <p>20 you're done.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. You testified earlier about some</p> <p>24 difficulties in getting JPM to follow through</p> <p>25 on the transfer of collateral or cash, right?</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yep.</p> <p>3 Q. And does this e-mail refer to</p> <p>4 that?</p> <p>5 A. Yeah. Some point of it, yes.</p> <p>6 Q. Okay. At the top of the page of</p> <p>7 Exhibit 304A there's an e-mail from you to</p> <p>8 Rich Ricci.</p> <p>9 Do you see that?</p> <p>10 A. Yep.</p> <p>11 Q. And you end your e-mail with an</p> <p>12 all-caps sentence that references a lawsuit.</p> <p>13 Do you see that?</p> <p>14 A. Yep.</p> <p>15 Q. What lawsuit were you referencing?</p> <p>16 A. Barclays filed suit against Bear</p> <p>17 Stearns related to the much publicized aspect</p> <p>18 funds that blew up. It was about a</p> <p>19 \$400 million claim we had against them. In</p> <p>20 order to talk to us about giving us our money</p> <p>21 back, several billion, JPM demanded that we</p> <p>22 drop that lawsuit. And our lawyers agreed to</p> <p>23 do that. And the reason that we agreed to do</p> <p>24 that apparently was we didn't want the 7</p> <p>25 billion -- the fact that we were short 7</p>

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 billion of cash out in the market because
3 markets were so skitterish and so concerned
4 about, you know, banks failing that we felt
5 that people might -- if they found that we had
6 a 7 billion hole, a potential hole in our
7 balance sheet, people might pull their
8 financial support. I believe that was the
9 reason.
10 So to get the settlement we agreed
11 to forgive the lawsuit. Drop the lawsuit.
12 Q. When did Barclays first now it had
13 a \$7 billion hole?
14 A. I have no idea. It was -- I mean,
15 we didn't we had a hole at all because the
16 cash was put in the account but when they went
17 to remove it which was, you know, days later
18 JPMorgan said the cash isn't there so...
19 Q. In some of your prior testimony
20 you stated that some of the collateral that
21 was delivered --
22 A. I'm sorry. I missed the beginning
23 of your question.
24 Q. Yeah. In some of your prior
25 testimony you had stated that some of the

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 transferred to you on Friday, the items that
3 we were talking about to fill the gap.
4 MR. STERN: Objection to the form.
5 A. We had the repo collateral from
6 the Fed that JPMorgan delivered to us. We had
7 the deposit from JPMorgan. And, to my
8 knowledge, we had the additional thing that I
9 knew at the time that we had was the -- or
10 should have had was the unpledged box. That's
11 what I knew we were supposed to have.
12 The only thing I'd say is that
13 that may not be the only thing that we were
14 supposed to have. There were pieces of the
15 transaction that I -- you referred to them
16 earlier, the 15(c)(3). I have no idea whether
17 they were supposed to have it or didn't have
18 it. I don't know. And the exchange traded
19 derivative contracts were one of the things
20 that were proposed by Lehman for us to have.
21 But I wasn't looking at it. And I didn't
22 follow up with it. That was decided for us to
23 have it or not have it. I don't know.
24 (Deposition Exhibit 305A, document
25 bearing production number

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 collateral that was delivered on Thursday
3 night included securities that Barclays did
4 not wish to purchase, correct?
5 A. Um-hum. Yes.
6 Q. Did Barclays return that
7 collateral?
8 A. No, we didn't return the
9 collateral. I testified that I went to Ian
10 Lowitt and said, "Ian, you got to take this
11 back and swap us into the collateral we
12 bought."
13 And he said, "That's impossible."
14 I should say the collateral we
15 agreed to buy on Monday night. So collateral
16 not on the excluded list.
17 And he said, "That's impossible
18 because our counterparties had been grabbing
19 -- our repo counterparties have been grabbing
20 collateral and liquidating it and buying us
21 in" is the term "on our repo and we don't have
22 it anymore. So this is what you got."
23 Q. So Barclays kept the collateral
24 that had been transferred over Thursday night
25 and you had additional collateral then

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 BCI-EX-(S)-00036496, marked for
3 identification as of this date.)
4 BY MR. TAMBE:
5 Q. Sir, I've handed you a one-page
6 document marked 305A. Would you take a moment
7 and look at it and let me know when you're
8 done.
9 (Document review.)
10 A. Okay. I read it. I don't quite
11 understand it right now.
12 Q. You're anticipating my question.
13 A. No, I'm not anticipating your
14 question. I just don't -- I'm anticipating
15 you're going to ask me what it means and I'm
16 struggling to remember at the time.
17 Q. But you see this is an e-mail
18 exchange between Jasen Yang, Stephen King, and
19 yourself.
20 A. Yeah.
21 Q. And it has to do with valuation of
22 Fed collateral.
23 Do you see that?
24 A. Yeah.
25 Q. Having read this e-mail can you

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 explain what this -- the issue that's being
3 discussed in this e-mail?
4 A. Well, my interpretation of it, and
5 I don't know whether it's an accurate
6 interpretation, 18.6 billion of lost Fed
7 collateral, right, so that's collateral that
8 we expected to get from the Fed that was
9 supposedly in the Fed box that JPMorgan was
10 supposed to deliver and didn't deliver, right?
11 He's saying it was about --
12 1.1 billion wasn't able to get prices for.
13 They're mainly structured notes, large
14 potential discount, Yankee bonds, unlikely to
15 have a large discount. When I couldn't get
16 the Barclays price I used the custodian price.
17 So I guess reading that again I
18 don't know what he means by lost Fed
19 collateral. Whether it's 18.6 of collateral
20 that we got that we didn't anticipate getting
21 or whether it was 18.6 that we were supposed
22 to get and didn't get. I just don't recall
23 right now.
24 Q. Going to your e-mail at the top of
25 the page you say if I read this right, "There

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 Lehman assets?
3 A. No.
4 Q. All right. Let's just take a
5 short break.
6 A. The auditor -- by the way, the
7 auditor you're referring to is PriceWaterhouse
8 I assume?
9 Q. I assume it's PriceWaterhouse. I
10 don't know who all the auditors might be for
11 Barclays.
12 MR. STERN: I'm sure it's
13 PriceWaterhouse.
14 A. Okay. But you're -- the external
15 auditors.
16 Q. The external auditors.
17 A. No. The answer to that is no.
18 Q. Let me ask the follow-up question.
19 Have you worked with any internal auditors at
20 Barclays?
21 A. None. Zero. But I was just
22 curious.
23 (Recess taken.)
24 BY MR. TAMBE:
25 Q. Mr. Keegan, are you aware of any

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 is a \$1.9 billion difference."
3 A. Yeah, that's what I'm trying to
4 figure --
5 Q. Any idea what that means?
6 A. I don't know what -- I'm trying --
7 I'm trying to figure that out right now. I'm
8 trying to remember what that means. What that
9 was referring to. I just don't remember right
10 now off the top of my head.
11 Q. And in the next line you have a
12 reference to 20 -- a swing of 28 billion gross
13 inventory differences. What does that mean?
14 A. (Reading document.)
15 Q. What does that mean?
16 A. That's the one I'm trying to --
17 I'm stumped on. I know it's my own e-mail.
18 I'm stumped right now.
19 Q. Did you play any role -- you can
20 put the document aside, yeah. We're done with
21 the document.
22 A. Sorry.
23 Q. Did you play any role in the fall
24 of 2008 or early 2009 in helping Barclays'
25 auditors account for the acquisition of the

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 sales of assets that were purchased by
3 Barclays from Lehman?
4 A. You mean liquidation of the
5 inventory?
6 Q. Liquidation of the, yeah,
7 collateral that was transferred over.
8 A. I know we did liquidate a lot of
9 it, yeah. Not all of it but...
10 Q. And do you know generally the
11 values at which you liquidated it?
12 A. No. I don't know.
13 Q. And was any of the collateral
14 liquidated by you or was this just something
15 you heard about it?
16 A. No. I didn't liquidate any of the
17 collateral.
18 Q. And how do you know that you did
19 liquidate a lot of it?
20 A. Because that was -- you know, that
21 was the goal. The goal was that we weren't --
22 owning assets during this time period was not
23 a good thing. So you're trying to hedge it
24 and get your risk down.
25 Q. Are you generally familiar with

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 the gain on the acquisition that was reported</p> <p>3 by Barclays?</p> <p>4 A. I'm familiar that we reported a</p> <p>5 gain in our financial statements, yeah.</p> <p>6 Q. And are you familiar with the</p> <p>7 reasons for the gain?</p> <p>8 A. Only, again, in preparation for</p> <p>9 the deposition. So generally no.</p> <p>10 Q. All right. I--</p> <p>11 A. I don't believe any of it came</p> <p>12 from securities.</p> <p>13 Q. You don't believe any of it came</p> <p>14 from securities?</p> <p>15 A. I have no knowledge where it came</p> <p>16 from but I don't know why it would come</p> <p>17 from -- I don't know why. Under the</p> <p>18 circumstances of what happened -- what was</p> <p>19 happening and what happened subsequently in</p> <p>20 market values, that we would have been booking</p> <p>21 gains from the liquidation of the inventory if</p> <p>22 that's what you're asking.</p> <p>23 You know, I mean, I know there's</p> <p>24 one bond, for instance, that we got that was</p> <p>25 on the excluded list that we don't want --</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 didn't want. We got it. It was Pine. It was</p> <p>3 one of the structured transactions that Lehman</p> <p>4 did that took their revolve -- it was for the</p> <p>5 financing of their revolvers for their</p> <p>6 commitments that they gave out to corporate</p> <p>7 companies.</p> <p>8 They securitized them so they</p> <p>9 could finance them with the Fed. And it was</p> <p>10 like the Racers which you referred to earlier.</p> <p>11 It was a billion dollar security. It had a</p> <p>12 billion dollar mark on it. We valued it at</p> <p>13 like \$600 million in our valuation over the</p> <p>14 weekend. We ended up with that. And, you</p> <p>15 know, we backed it up with all the loans which</p> <p>16 we didn't want.</p> <p>17 So the estate's been trying to buy</p> <p>18 it from us ever since and they're offering us</p> <p>19 like 650 for it or 600. I think that's going</p> <p>20 to be the best offer is the 600. Now, we got</p> <p>21 that at a billion minus, maybe, you know, a</p> <p>22 regular corporate haircut of 5 percent.</p> <p>23 So that was -- you know, that was</p> <p>24 one example of a security that we still</p> <p>25 haven't liquidated that we still hold onto</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 that was on the excluded list initially. And</p> <p>3 unfortunately under the circumstances we ended</p> <p>4 up with it. And they're kind of validating</p> <p>5 our price. And your estate is kind of</p> <p>6 validating our price -- your client is</p> <p>7 validating our price by offering us 650 for</p> <p>8 it.</p> <p>9 Q. Putting aside Pine are you aware</p> <p>10 of the circumstances of any other securities</p> <p>11 that were transferred over? Whether it was</p> <p>12 sold or whether they're being held.</p> <p>13 MR. STERN: Objection to the form.</p> <p>14 I'm not sure what the question is.</p> <p>15 Q. Do you understand the question?</p> <p>16 A. No, I don't. I really don't. I</p> <p>17 don't know what you're after.</p> <p>18 Q. You described in detail the</p> <p>19 details of Pine and the valuation of Pine.</p> <p>20 Putting Pine aside, are you aware of the</p> <p>21 circumstances, the specifics of any other</p> <p>22 securities that were transferred over, whether</p> <p>23 they're being held, whether they're being</p> <p>24 liquidated, whether there have been offers for</p> <p>25 the purchase of those securities?</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. So the process was securities</p> <p>3 which were liquid, okay, were -- well, all</p> <p>4 securities were hedged, you know, to the</p> <p>5 extent we could hedge them immediately. And</p> <p>6 then the hedges and the securities for stuff</p> <p>7 that was liquid, and we liquidated the market,</p> <p>8 were passed back to the various trading desks</p> <p>9 to be liquidated, to be sold, as ordinary</p> <p>10 course of business.</p> <p>11 The stuff that was unusual or</p> <p>12 illiquid and all of the ABS securities stayed</p> <p>13 with Stephen and Stephen liquidated them over</p> <p>14 time. But that's just ordinary business. I'm</p> <p>15 not aware -- you know, I'm not aware of any</p> <p>16 extraordinary gains or necessarily met</p> <p>17 extraordinary losses that we had coming into</p> <p>18 that so...</p> <p>19 MR. TAMBE: No further questions.</p> <p>20 Thanks.</p> <p>21 MR. STERN: Okay. So the</p> <p>22 trustee's lawyer will move over here and</p> <p>23 ask his questions.</p> <p>24 THE WITNESS: Okay.</p> <p>25 * * *</p>

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 EXAMINATION BY
3 MR. WOOD:
4 Q. Mr. Keegan, again, I'm John Wood
5 from Hughes Hubbard & Reed. We represent the
6 SIPA trustee. My first question is a
7 follow-up question on something you testified
8 about early in your testimony when you were
9 asked about people you coordinated with and
10 you mentioned the name John Mahon.
11 A. Yes.
12 Q. And I believe one of the things
13 you mentioned that he was looking into was
14 exposures under written contracts.
15 Do you recall that?
16 A. What do you mean exposures under
17 written contracts?
18 Q. Well -- or maybe you just said
19 exposure under contracts.
20 A. Swap contracts. Derivative
21 contracts. So counterparty exposures. I ask
22 you to swap with you, right? It's -- at that
23 point in time the actual exposure should be
24 zero. The market moves either for me or
25 against me. I now either owe you money or you

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Q. And you are not on that e-mail but
3 were later included on the e-mail chain. And
4 Mr. Lowitt writes in the middle of that first
5 sentence, "Have an idea regarding a structured
6 Lehman paper that Chase was left funding."
7 Do you recall what that refers to?
8 A. Yeah. That would be -- the
9 structured Lehman paper would be things like
10 Pine, Varo, the Racers. A couple other
11 transactions they had. Five or six
12 securitizations they put together. And we
13 ended up with the senior piece of Pine. But
14 there's a B note for Pine that has all the
15 rights and control features that's sitting
16 with JPMorgan. So perhaps you'd like to buy
17 that. In and of itself it's not worth a lot
18 of money, right? If I've got a security that
19 they say has a billion dollar face which is
20 what they say it has a billion dollar face and
21 it has a billion dollar value, and I go
22 through it and say, Listen, this is loaded
23 with these other things, we only think it's
24 worth about 600 million.
25 Okay? The B note its worth about

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 owe me money, right?
3 So those are assets and -- or
4 potential liabilities. And in the transaction
5 over the Monday night and the weekend he was
6 looking at that aspect of it, right?
7 Ultimately when the bankruptcy was filed
8 people liquidated those contracts.
9 (Deposition Exhibit 306A, e-mail
10 dated Sunday, 9/21/2008 9:15:16 p.m.,
11 marked for identification as of this
12 date.)
13 BY MR. WOOD:
14 Q. Handing you what's been marked as
15 Exhibit 306A, it's a two-page e-mail string.
16 The one at the top is an e-mail from you on
17 September 21st. Take a moment to look it
18 over.
19 A. Okay.
20 (Document review.)
21 A. Okay.
22 Q. At the bottom of the page there
23 there's an e-mail from Ian Lowitt on September
24 20th.
25 A. Right.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 that much (indicating), right? As a value of
3 a security.
4 MR. STERN: You're signalling
5 what?
6 THE WITNESS: Zero.
7 A. Okay? So how much do I want to --
8 but it would allow -- but it does give us back
9 some control rights with respect to the 600
10 million of exposure that we do have in value.
11 We do have. It gives us some moves to make.
12 So what would I be willing to pay for that.
13 Not a whole lot, but maybe something.
14 Q. And then as you look higher up in
15 the e-mail so later chronologically Mr. Lowitt
16 writes to you, "On reflection, it's LBHI not
17 BarCap that is the natural buyer."
18 So my question is what was the
19 outcome on this issue?
20 A. Nothing. We didn't buy them. And
21 JPMorgan for one didn't want to sell them.
22 We thought -- just to be clear, we
23 thought the inventory would come out. And we
24 thought JPMorgan would liquidate its holdings,
25 its remaining holdings of the Lehman repo, et

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 cetera, right? Because they had a huge -- I</p> <p>3 don't know what was reported, 25 billion or</p> <p>4 something like that, secured exposure to</p> <p>5 Lehman. That they would ultimately liquidate</p> <p>6 that exposure and you'd see those securities</p> <p>7 in the marketplace and then we might be a</p> <p>8 natural buyer for something like the B note</p> <p>9 for Pine since we owned the A note already.</p> <p>10 But we never saw the paper come out.</p> <p>11 Q. I'm sorry. What was the last --</p> <p>12 A. We never saw the paper come out</p> <p>13 so...</p> <p>14 (Deposition Exhibit 307A, document</p> <p>15 bearing production numbers</p> <p>16 BCI-EX-00053873 through BCI-EX-00054261,</p> <p>17 marked for identification as of this</p> <p>18 date.)</p> <p>19 BY MR. WOOD:</p> <p>20 Q. I've handed you what's been marked</p> <p>21 as Exhibit 307A. As you'll see it's an e-mail</p> <p>22 chain with a pretty hefty attachment. Feel</p> <p>23 free to look at the attachment if you'd like</p> <p>24 but I'm really just going to ask you some</p> <p>25 questions about the e-mails themselves.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Okay.</p> <p>3 MR. STERN: So, Mike, you may want</p> <p>4 to read through the e-mails and then</p> <p>5 just glance at the attachments.</p> <p>6 THE WITNESS: Yeah, no. That's</p> <p>7 fine. I just want to see what this is</p> <p>8 to see if I understand it.</p> <p>9 MR. WOOD: And just so the record</p> <p>10 is, clear this, is an e-mail and the</p> <p>11 first page is BCI Exhibit 00053873.</p> <p>12 MR. STERN: Well, it's Bates</p> <p>13 number BCI-EX-00053873 through -- the</p> <p>14 numbers appear to be cut off on this</p> <p>15 copy. So, Mike, just let us know after</p> <p>16 you've had time to review this.</p> <p>17 THE WITNESS: Okay. The problem</p> <p>18 is there's two bids floating around.</p> <p>19 I'm trying to figure out which one this</p> <p>20 is.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. If you look on page 2 of the</p> <p>24 e-mail, so the earliest e-mail</p> <p>25 chronologically, it's an e-mail from Jasen</p>
Page 124	Page 125
<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Yang, Monday, September 22nd. The subject is</p> <p>3 Financing Facilitate Schedule. He writes,</p> <p>4 "Robert, James, I've attached the schedule</p> <p>5 produced by Barclays ops of the collateral</p> <p>6 currently held at BoNY under the repo</p> <p>7 financing provided to Lehman (with a total</p> <p>8 BoNY market value of approximately 45</p> <p>9 million). It appears to differ substantially</p> <p>10 from the file received from Lehman on Friday</p> <p>11 evening. We're looking at the differences</p> <p>12 now."</p> <p>13 Just one first point of</p> <p>14 clarification. That 45 million, do you think</p> <p>15 that's accurate or is that supposed to be 45</p> <p>16 billion?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. Total BoNY market value 45</p> <p>19 billion. I would -- I'm speculating but I</p> <p>20 think it's probably billion he's probably</p> <p>21 referring to. I said there were several</p> <p>22 different versions of BoNY collateral value</p> <p>23 list put in front of us. There was a 47 list,</p> <p>24 there was a 45 list, there was a 52 list.</p> <p>25 Q. And when you're referring to --</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 I'm sorry.</p> <p>3 A. There was another e-mail I was</p> <p>4 presented earlier which is Exhibit --</p> <p>5 MR. STERN: 144A.</p> <p>6 A. 144A, right?</p> <p>7 So it says Total securities and</p> <p>8 cash received 52.19, right? That</p> <p>9 theoretically is BoNY's valuation in effect of</p> <p>10 the cumulative assets of what we got. It's</p> <p>11 one of many evaluations they had. They had a</p> <p>12 45 one. There was a 47 one floating around.</p> <p>13 So, you know, at the end of the day what I was</p> <p>14 trying to get a handle on was how much value</p> <p>15 did we actually receive to do the repo. The</p> <p>16 Fed repo. And we couldn't get it from Lehman.</p> <p>17 And we couldn't get it from JPMorgan. We</p> <p>18 tried to get it from BoNY but BoNY just kept</p> <p>19 giving us different numbers. So I think</p> <p>20 that's what he's referring to.</p> <p>21 Q. And then if you look at the first</p> <p>22 page of the e-mail string, the second e-mail</p> <p>23 down from Robert Azerad dated Monday,</p> <p>24 September 22nd and, again, it looks like you</p> <p>25 are not on this but it was forwarded to you.</p>

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **And Mr. Azerad writes, "Here is the file with**
3 **the \$1.9 billion of additional collateral that**
4 **Paolo Tonnuci asked me to e-mail you."**
5 A. Um-hum.
6 **Q. Do you know where that number**
7 **\$1.9 billion came from?**
8 A. Well, I know what I asked Jason
9 for, okay?
10 **Q. Which is what?**
11 A. So what I asked Jason for was the
12 list of unpledged securities. I asked him
13 for -- to get me that list. And I asked him
14 for that reason -- specific reason that I
15 talked about earlier. A company called
16 Navigator was on that list, an equity
17 position, restricted equity, that Lehman owned
18 44 percent of the company is the number that
19 rings in my head but may not be the right
20 number. And it's a real company. An
21 operating company. That Lehman had -- several
22 of the members of the board of directors were
23 Lehman Brother employees. And another board
24 member had understood from some source, I
25 don't know what source he understood it from,

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 **now, do you know what this \$1.9 of additional**
3 **collateral referred to by Mr. Azerad is?**
4 A. I just told you what I believe it
5 is.
6 **Q. Do you know how they came --**
7 A. Do I know definitively, the e-mail
8 is not to me. I'm not involved in the
9 conversation so I don't know definitively but
10 I'm telling you what I believe it is.
11 **Q. Do you know whether any assets**
12 **were transferred from Lehman's clearance box**
13 **at DTC over to Barclays on Friday, September**
14 **19th?**
15 A. I don't know. I have no idea of
16 the actual box mechanics.
17 **Q. Sorry. What was that?**
18 A. The actual mechanics of the box
19 movements, I have no idea what -- when and if
20 they happened. I do know -- you know, I
21 believe that what happened on JPMorgan's side
22 on the Thursday night was they took the
23 tri-party repo as their securities came back
24 from the Fed and went into Lehman's tri-party
25 account, instead of sending them directly to

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 that Barclays was now the owner of the shares
3 through this -- through the purchase
4 transaction. And this person knows Archie
5 Cox. He called Archie Cox, explained to
6 Archie, you know, that we needed to name two
7 new board members to replace the two Lehman
8 employees because the company couldn't operate
9 effectively without getting those guys
10 replaced.
11 So I called Stephen to find out,
12 you know, where the Navigator stock was. And
13 he told me we hadn't gotten it yet. And then
14 there was some subsequent discussion about,
15 you know, where it was and, you know, I asked
16 for the list of -- because it was on the list
17 I reviewed of the -- of the unpledged
18 securities we were supposed to get that it was
19 on that list. So I asked Jason for that list
20 because I had to go back -- I think I was
21 going back to Jonathan Hughes to say here it
22 is Jonathan. You know, go get it from -- go
23 get it from JPMorgan. Because we understood
24 it to be in a box at JPMorgan for safekeeping.
25 **Q. Going back to my earlier question**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 us, JPMorgan made the error of pushing them
3 into the Lehman box. And then what I believe
4 happened was all the standing orders that were
5 in there prior to the bankruptcy that they
6 hadn't performed on when the securities hit
7 got delivered across the street and that's why
8 they weren't able to deliver us the collateral
9 timely. But that's JPMorgan's problem.
10 (Deposition Exhibit 308A, document
11 bearing production numbers
12 BCI-EX-(S)-00036396, marked for
13 identification as of this date.)
14 BY MR. WOOD:
15 **Q. Mr. Keegan, I've handed you what's**
16 **been marked as Exhibit 308A. Feel free to**
17 **take a moment to look it over.**
18 A. Okay.
19 **Q. And it's an e-mail from Haejin**
20 **Baek -- and I may not be pronouncing that**
21 **incorrectly but -- to you on September 23rd.**
22 A. Yeah.
23 **Q. The subject is SAS senior.**
24 **First of all, what does SAS stand**
25 **for?**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 A. Off the top of my head I don't
3 remember specifically. I do know -- I think I
4 know what she's talking about. But I don't
5 know what the security actually is. But it's
6 another one of the -- it's another one of the
7 Lehman structured finance trades where they
8 basically were taking their loan books,
9 turning it into AAA securities so they could
10 post it with the Fed and get the funding.
11 **Q. And so is that what you understand**
12 **the \$1.1 with JPM to refer to at the beginning**
13 **of the e-mail?**
14 A. That JPM is holding 1.1 billion of
15 SAS and we got 80 million of it delivered to
16 us.
17 **Q. Okay. I don't have anything**
18 **further on that document.**
19 **Mr. Keegan, were you involved in**
20 **any way in the creation of any schedules --**
21 **actually, strike that.**
22 **Were you involved in any**
23 **discussions with Lehman Brothers employees**
24 **regarding any schedules of unencumbered**
25 **clearing box assets at DTC?**

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 to take it as part of the deal, payment as
3 part of the deal.
4 **Q. And what did you conclude?**
5 A. That it did have value and we
6 should take it.
7 **Q. And just to be clear, unencumbered**
8 **box -- I'm sorry. The unencumbered assets you**
9 **were referring to were at DTC?**
10 A. I don't remember if they D -- I
11 don't remember if they were DTC or whose
12 assets they were. I couldn't tell you they
13 were all DTC because I believe some of them
14 were at JPMorgan, in fact.
15 I mean, I've been led to believe
16 that the Navigator stock which to my knowledge
17 to this day we still haven't gotten is sitting
18 in safekeeping at JPMorgan. I have no idea if
19 that's a fact or not.
20 **Q. Do you recall whether you came up**
21 **with a number for the valuation of these**
22 **unencumbered assets?**
23 A. No. It was kind of take it for
24 what's on the piece of paper or don't take it.
25 Because most of the value was in like five or

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 A. Yeah. I referred to it several
3 times as the unpledged asset schedule. Yeah.
4 **Q. And what was your involvement in**
5 **that?**
6 A. Friday morning, the 19th, I was
7 called into Rich's office --
8 **Q. And that's Rich Ricci?**
9 A. Rich Ricci. Who was working out
10 of the Lehman office.
11 And I was presented this schedule.
12 I think it was Paolo Tonucci may have provided
13 it to Rich and Paolo may have been in the room
14 at the time. It was Paolo or anybody else.
15 It was definitely a Lehman employee. And they
16 said that this was the schedule of
17 unencumbered assets that they could provide
18 us, they could get -- you know, incorporate in
19 the deal and give to us if we wanted it for
20 the values that were indicated.
21 So I was asked by Rich to take a
22 quick look at the values and try to
23 substantiate the values and determine whether
24 we thought this was something we thought had
25 value or not and whether we would be willing

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1 **M. KEEGAN - HIGHLY CONFIDENTIAL**
2 six, maybe eight max, muni securities. I
3 believe these were munies. And then
4 Navigator. And on the muni securities we were
5 able to go to Bloomberg and actually get a
6 price but that for all -- you know, for all
7 intents and purposes that was Lehman's price.
8 So I have no idea if that was a good price or
9 not.
10 But we weren't able to do much
11 more than that with that list. And we had
12 Navigator and, you know, the bottom line I
13 guess is you weren't getting anything else.
14 There wasn't anything else to give us. So we
15 could take it or not take it.
16 **Q. Do you recall any other assets**
17 **besides the munies and the Navigator?**
18 A. What was on that list, the list
19 was yea thick (indicating). This might be the
20 list for all I know.
21 MR. STERN: Yea thick is how
22 thick?
23 THE WITNESS: An inch. Inch and a
24 half.
25 A. Most of that list was comprised of

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 the residuals from securitization transactions
3 which had zero values on them. But I also
4 wanted to make sure that by taking that list,
5 because they were residual transactions which
6 were subprime securitizations, Alt A
7 securitizations, everything that was in the
8 news, that we weren't taking on any
9 liabilities we wouldn't want to own by taking
10 this list. And that was kind of, you know,
11 one of the other things I was focused on
12 trying to get an answer to.
13 Q. And the Navigator securities were
14 at JPMorgan Chase; is that right?
15 MR. STERN: Objection to the form.
16 A. I've been told that's where they
17 are.
18 Q. And do you know where the munies
19 were?
20 A. I don't know where they are. I
21 have no idea. I don't even know -- to be
22 honest, I don't know anything about munies. I
23 don't know if they're DTC eligible or not.
24 MR. WOOD: I don't have any
25 further questions.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 A. Why would you go to Deutsche Bank.
3 Why wouldn't you come here and keep the team
4 together.
5 Q. Did you discuss the sale
6 transaction with Rene at all?
7 A. No.
8 Q. Did you discuss the closing of the
9 transaction with Rene at all?
10 A. No. No, it was about his
11 employment. He had an offer to go be the head
12 of credit trading at Deutsche Bank. And we
13 were -- I spent the weekend talking about it
14 with him.
15 Q. And during the course of the
16 weekend you didn't discussion the sale
17 transaction with Rene at all?
18 A. No. Why would I do that? He
19 cares about how much he's getting paid.
20 That's what he cares about. To the extent
21 that we were going to meet that need then we'd
22 be in the game. But then I had to convince
23 him why Barclays was a better platform than
24 Deutsche Bank.
25 Q. How did you do?

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 MR. DAKIS: I have a couple.
3 * * *
4 EXAMINATION BY
5 MR. DAKIS:
6 Q. Mr. Keegan, I'm Robert Dakis from
7 the law firm of Quinn, Emanuel, Urquhart,
8 Oliver & Hedges. We represent the Official
9 Committee of Unsecured Creditors.
10 I'm just going to ask you a couple
11 follow-up questions about some matters that
12 you discussed earlier with one of my
13 colleagues. You testified earlier that during
14 the weekend of September 20th, 2009 you spoke
15 with Lehman Brothers employees that Barclays
16 was hoping to retain.
17 MR. STERN: Objection to the form.
18 A. On the 20th, yeah. 20th and 21st,
19 yeah.
20 Q. Who did you speak with?
21 A. It was principally Rene Canezen.
22 Eric Felder about Rene. I don't remember the
23 rest. They were Rene's guys so...
24 Q. What generally did you discuss
25 with Rene?

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 MR. STERN: Objection to the form.
3 A. Well --
4 Q. Did Rene come over?
5 A. Yeah, he came over.
6 MR. DAKIS: Could you please put
7 Exhibit 144A back in front of the
8 witness?
9 MR. STERN: Well, I don't have a
10 copy. These are all jumbled.
11 Q. You can use mine. I should be
12 able to manage.
13 On Exhibit 144A towards the bottom
14 of the page, do you see the line that states
15 the total securities and cash received is
16 \$52.19 billion?
17 A. Um-hum.
18 Q. And I believe you testified
19 earlier that the \$52.19 billion was the Bank
20 of New York's valuation of the assets?
21 MR. STERN: Objection to the form.
22 A. Well, the term valuation is kind
23 of a broad term, right? That's -- when they
24 take information from their inventory records,
25 information that they might have access to the

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 in the marketplace, and they do that</p> <p>3 mathematical extension, that is one of the</p> <p>4 several numbers that they came up with. Okay?</p> <p>5 They came up with a 45 billion number.</p> <p>6 There's another e-mail that talks about they</p> <p>7 came up with a \$47 billion number. Another</p> <p>8 e-mail talks about -- this is all in the</p> <p>9 course of like, you know, six hours.</p> <p>10 So, you know, I wouldn't say it's</p> <p>11 a -- we didn't put a whole lot of stock in it,</p> <p>12 right? So...</p> <p>13 Q. And earlier you testified that if</p> <p>14 you could believe Bank of New York's value.</p> <p>15 Is that what you meant by if you could believe</p> <p>16 their value?</p> <p>17 A. Yeah. If you could believe their</p> <p>18 value we would have 50 -- we would have 7</p> <p>19 billion of haircut.</p> <p>20 Q. And aside from what you just</p> <p>21 testified about the values shifting up and</p> <p>22 down, did you have any other reason not to</p> <p>23 believe Bank of New York's value?</p> <p>24 A. Yeah. Absolutely.</p> <p>25 MR. STERN: Objection. Wait,</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 wait, wait, wait. Objection to the</p> <p>3 form.</p> <p>4 Can you repeat the question,</p> <p>5 please, Francis?</p> <p>6 (Record read.)</p> <p>7 A. The only reason that -- the only</p> <p>8 thing that they would be -- would competently</p> <p>9 value, okay, were things like exchange traded</p> <p>10 equities that were very liquid. Liquid</p> <p>11 corporate debt. Treasuries. They'd probably</p> <p>12 put a pretty good price on that stuff.</p> <p>13 Any kind of structured paper,</p> <p>14 asset-backed paper, all that stuff, they've</p> <p>15 never seen it before. They haven't been</p> <p>16 provided prices. They'd have no clue what</p> <p>17 that really -- what that paper should really</p> <p>18 be valued at. Lehman didn't have it valued</p> <p>19 right.</p> <p>20 Q. Where would you go to get values</p> <p>21 for that paper?</p> <p>22 MR. STERN: Objection to the form.</p> <p>23 Can I hear that again?</p> <p>24 (Record read.)</p> <p>25 A. You would go to Bloomberg and</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 you'd find out what it was. If you didn't</p> <p>3 what the security was you'd get the</p> <p>4 prospectus, you'd take a look at it. You'd</p> <p>5 see what the security was. You'd get the cash</p> <p>6 remittance reports if it's an ABS security.</p> <p>7 You'd look at what -- at how the security's</p> <p>8 actually performing. You'd put a projection</p> <p>9 of what you think cash flow is going to be out</p> <p>10 of the securities and you'd value that from</p> <p>11 those cash flows. That's how you come up with</p> <p>12 a value.</p> <p>13 Q. Did you personally value any of</p> <p>14 the securities transferred in the sale</p> <p>15 transaction?</p> <p>16 A. No. I didn't value any of the</p> <p>17 securities.</p> <p>18 Q. Anyone from your team do the</p> <p>19 valuations?</p> <p>20 A. Stephen King. When you talk to</p> <p>21 him about that information if you talk to him</p> <p>22 he would have much -- give you much better</p> <p>23 information on that than I could give you on</p> <p>24 that.</p> <p>25 MR. DAKIS: Nothing further.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 MR. STERN: We'll just take a</p> <p>3 break. I may have some questions.</p> <p>4 Let's go off the record.</p> <p>5 (Recess taken.)</p> <p>6 EXAMINATION BY</p> <p>7 MR. STERN:</p> <p>8 Q. Let's go back on the record.</p> <p>9 Mr. Keegan, from your perspective</p> <p>10 what was the purpose of the haircut in the</p> <p>11 reverse repo that was the basis of the Fed</p> <p>12 replacement transaction?</p> <p>13 MR. TAMBE: Objection to the form.</p> <p>14 Lack of foundation.</p> <p>15 Q. Go ahead.</p> <p>16 A. So the repo -- the Fed was</p> <p>17 providing financing to Lehman Brothers. It</p> <p>18 was ordinary course repo. And they provided</p> <p>19 haircuts that -- a repo provider takes</p> <p>20 haircuts because I'm giving you cash and I'm</p> <p>21 getting back a security. That security is</p> <p>22 subject to market movements. It's subject to</p> <p>23 liquidity risk. And if you have to liquidate</p> <p>24 it will take a while to liquidate it. And</p> <p>25 that haircut is supposed to be the cushion</p>

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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 that's provided to the financier so that he</p> <p>3 has a reasonable probability to recover the</p> <p>4 amount of his loan from the security if the</p> <p>5 counterparty defaults and can't pay it back.</p> <p>6 Q. And is that the way it's supposed</p> <p>7 to work in a normal market?</p> <p>8 A. Well, yeah. That's the way in the</p> <p>9 normal market it works. But the Fed couldn't</p> <p>10 have anticipated Lehman's bankruptcy either.</p> <p>11 I doubt they anticipated Lehman's bankruptcy,</p> <p>12 you know, weeks ahead of time. So the</p> <p>13 haircuts that they were using were traditional</p> <p>14 haircuts that would be in the normal market</p> <p>15 and a market that is deteriorating rapidly as</p> <p>16 the market did after Lehman Brothers'</p> <p>17 bankruptcy, you know, those haircuts wouldn't</p> <p>18 necessarily be sufficient to protect you</p> <p>19 against market movements during the period of</p> <p>20 time it would take you from the time you took</p> <p>21 the possession of the collateral to liquidate</p> <p>22 it.</p> <p>23 Q. Now, let's turn to the period you</p> <p>24 testified to from late on Thursday, September</p> <p>25 18th going into Friday, September 19th.</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 Do you have that time frame in</p> <p>3 mind?</p> <p>4 A. Okay.</p> <p>5 Q. In that time frame why from your</p> <p>6 perspective did Barclays need an additional</p> <p>7 value cushion beyond the repo haircut?</p> <p>8 A. I mean, the first reason why we</p> <p>9 were being delivered securities that, based on</p> <p>10 the prior work that we did over the weekend,</p> <p>11 the prior weekend, based on the fact that we</p> <p>12 didn't come to an agreement with Lehman on --</p> <p>13 on adjusting the value of the securities and</p> <p>14 we were getting those securities, that the</p> <p>15 haircut that we were getting -- that those</p> <p>16 securities that we were getting were</p> <p>17 overvalued and therefore they were in effect</p> <p>18 being used -- they were burning up the</p> <p>19 haircut, they were using it up, and that</p> <p>20 needed to be replaced.</p> <p>21 Q. Did anybody ask you if there was</p> <p>22 any excess available through the repo?</p> <p>23 A. Yeah, we were asked --</p> <p>24 MR. TAMBE: Objection to the form</p> <p>25 of the question.</p>
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<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yeah, I was asked by I believe</p> <p>3 Rich Ricci how much did we think we might have</p> <p>4 in terms of "excess value" to pay for certain</p> <p>5 liabilities that Barclays was absorbing in the</p> <p>6 transaction. And, you know, I thought the</p> <p>7 question was -- the question was naive under</p> <p>8 the circumstances.</p> <p>9 And, you know, again, we couldn't</p> <p>10 tell exactly what we had and didn't have at</p> <p>11 that point in time. And we knew that what we</p> <p>12 did have, while it was done on haircuts that</p> <p>13 were -- you know, if it were a normal market</p> <p>14 and they were done at haircuts that assumed</p> <p>15 the securities were valued properly. I mean,</p> <p>16 if they weren't valued properly, and some of</p> <p>17 them were weren't valued properly, then they</p> <p>18 were overvalued. And, therefore, the haircut</p> <p>19 wasn't adequate to protect us against the risk</p> <p>20 that was inherent in Lehman Brothers were</p> <p>21 taking itself, never mind to have excess to</p> <p>22 pay for liabilities.</p> <p>23 Q. Turning back to Exhibit 144A and</p> <p>24 looking at the figures that are listed on this</p> <p>25 document, from your perspective were any of</p>	<p>1 M. KEEGAN - HIGHLY CONFIDENTIAL</p> <p>2 the figures listed here reliable?</p> <p>3 MR. TAMBE: Objection to the form</p> <p>4 of the question.</p> <p>5 A. The repo cash amount was the cash</p> <p>6 that we sent out to JPMorgan so that's a good</p> <p>7 number.</p> <p>8 Q. And what is that number?</p> <p>9 A. 45 billion.</p> <p>10 We thought the repo cash amount on</p> <p>11 the deposit that was at JPMorgan, the 7</p> <p>12 billion was a good number as well, but that</p> <p>13 was ultimately taken back by JPMorgan.</p> <p>14 Q. What about the rest of the</p> <p>15 figures?</p> <p>16 A. There'd be aspects of BoNY's</p> <p>17 valuations that would be okay, but there would</p> <p>18 be significant portions of it that weren't</p> <p>19 which kind of takes the whole -- you know,</p> <p>20 renders the whole number not reliable so...</p> <p>21 Q. Going back to the Monday,</p> <p>22 September 15th, discussions between you and</p> <p>23 people at Lehman concerning haircuts and</p> <p>24 valuation adjustments on certain securities,</p> <p>25 were there any disagreements between you and</p>

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 the people at Lehman?

3 A. This is Monday.

4 Q. This is on Monday the 15th.

5 A. Yeah. There was -- there was a
6 number of disagreements, right? That's in
7 part the context of the exclude list. We
8 couldn't come to an agreement on -- we
9 disagreed with their values. We couldn't come
10 to an agreement on their values. So we just
11 said, Fine, you know, you own it, you know,
12 keep it. We won't take it so...

13 MR. STERN: I have no further
14 questions.

15 MR. TAMBE: Just a couple of
16 follow-up questions.

17 * * *

18 EXAMINATION BY

19 MR. TAMBE:

20 DI Q. When you took the break before
21 your own lawyer began questioning you did you
22 discuss the content of your testimony with
23 your lawyer?

24 MR. STERN: I'm going to object
25 and I'm going to instruct you not to

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 answer.

3 DI Q. Did you discuss the questions that
4 Mr. Stern was going to ask when you came back
5 from the break?

6 MR. STERN: I'm going to instruct
7 you not to answer.

8 DI Q. And did you discuss with Mr. Stern
9 the answers that you were going to give in
10 response to those questions?

11 MR. STERN: Again, I'll instruct
12 you not to answer.

13 Q. On the Fed repo that you testified
14 about in response to Mr. Stern's questions, do
15 you know what the size of the Fed financing to
16 Lehman was the week prior to the week in
17 question? So the week that began on the 8th
18 of September?

19 A. No, I don't.

20 Q. And do you know what the haircut
21 schedule was that was charged by the Fed
22 during that week?

23 A. Precisely, no, I don't. If you're
24 asking about the adjustment that week, I don't
25 know.

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1 M. KEEGAN - HIGHLY CONFIDENTIAL
2 Q. Do you know of any adjustments in
3 the haircut schedule proposed by the Fed
4 either on Friday, September 12th, or Monday,
5 September 15th?

6 A. No.

7 MR. TAMBE: No further questions.

8 MR. STERN: I think we're done.

9 Off the record.

10 (Time Noted: 12:39 p.m.)

11
12
13
14
15
16
17
18
19
20 MIKE KEEGAN

21
22 Subscribed and sworn to before me
23 this ____ day of _____, 2009.

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1
2 C E R T I F I C A T E
3 S T A T E O F N E W Y O R K)

4 : ss.

5 C O U N T Y O F N E W Y O R K)

6 I, FRANCIS X. FREDERICK, a Notary
7 Public within and for the State of New
8 York, do hereby certify:

9 That MIKE KEEGAN, the witness
10 whose deposition is hereinbefore set
11 forth, was duly sworn by me and that
12 such deposition is a true record of the
13 testimony given by the witness.

14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that I
17 am in no way interested in the outcome
18 of this matter.

19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 28th day of
21 August, 2009.

22
23
24 FRANCIS X. FREDERICK
25

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<p>1 2 ----- I N D E X ----- 3 WITNESS EXAMINATION BY PAGE 4 MIKE KEEGAN MR. TAMBE 5, 146 5 MR. WOOD 119 6 MR. DAKIS 135 7 MR. STERN 141 8 9 10 11 ----- INFORMATION REQUESTS ----- 12 DIRECTIONS: 146, 147, 147 13 RULINGS: NONE 14 TO BE FURNISHED: NONE 15 REQUESTS: NONE 16 MOTIONS: NONE 17 18 19 20 21 22 23 24 25</p>	<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 294A 5 document bearing production 6 number BCI-EX-(S)-00035155..... 47 7 Exhibit 295A 8 document bearing production 9 number BCI-EX-(S)-00035143..... 49 10 Exhibit 296A 11 document bearing production 12 number BCI-EX-(S)-00035440..... 52 13 Exhibit 297A 14 document bearing production 15 numbers BCI-EX-(S)-00035441 16 through BCI-EX-(S)-00035442..... 55 17 EXHIBIT 298A 18 Document bearing production 19 number BCI-EX-(S)-00035491.....56 20 Exhibit 299A 21 document bearing production 22 numbers BCI-EX-(S)-00035619 23 through BCI-EX-(S)-00035620..... 63 24 Exhibit 300A 25 document bearing production number BCI-EX-(S)-00036005..... 68</p>
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<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 301A 5 document bearing production 6 numbers BCI-EX-(S)-00082251..... 76 7 Exhibit 302A 8 document bearing production 9 number BCI-EX-00054270..... 79 10 Exhibit 303A 11 document bearing production 12 number BCI-EX-00077814..... 102 13 Exhibit 304A 14 document bearing production 15 number BCI-EX-00080560..... 104 16 Exhibit 305A 17 document bearing production 18 number BCI-EX-(S)-00036496..... 109 19 Exhibit 306A 20 e-mail dated Sunday, 21 9/21/2008 9:15:16 p.m..... 119 22 Exhibit 307A 23 document bearing production 24 numbers BCI-EX-00053873 25 through BCI-EX-00054261..... 122</p>	<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 308A 5 document bearing production 6 numbers BCI-EX-(S)-00036396..... 129 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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NAME OF CASE: IN RE: LEHMAN BROTHERS
DATE OF DEPOSITION: AUGUST 28, 2009
NAME OF WITNESS: MIKE KEEGAN

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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MIKE KEEGAN